

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804
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OPIATE LITIGATION :
: **VOLUME 21**
CASE TRACK THREE : JURY TRIAL
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
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08:50:15 1 (In open court at 8:50 a.m.)

08:50:19 2 THE COURT: Okay. Everyone can be seated.

08:50:23 3 All right. We can maybe take care of exhibits for
08:50:56 4 those last two witnesses.

08:50:57 5 All right. I've got a list here, two-page list of
08:51:02 6 exhibits used by the testimony of Dr. Wailes. Are there any
08:51:07 7 objections? I'll just go right down the list.

08:51:09 8 MR. WEINBERGER: Yes, Your Honor. We were
08:51:10 9 just in the midst of conferring, but I think we know where
08:51:15 10 we're landing.

08:51:16 11 THE COURT: All right.

08:51:16 12 MR. WEINBERGER: So you want to start with the
08:51:20 13 Defense exhibits first and --

08:51:23 14 THE COURT: I don't have any Defense exhibits.

08:51:25 15 MR. WEINBERGER: All right.

08:51:28 16 THE COURT: I've got a list of the
08:51:30 17 Plaintiffs'. I'll just go down the list and see it if there
08:51:33 18 are any objections.

08:51:34 19 MR. WEINBERGER: Okay.

08:51:35 20 THE COURT: 21865, any objection?

08:51:41 21 MS. FUMERTON: No objection, Your Honor.

08:51:42 22 THE COURT: Thank you. That's in.

08:51:43 23 21857.

08:51:46 24 MS. FUMERTON: No objection.

08:51:47 25 THE COURT: Thank you. 28217.

08:51:51 1 MS. FUMERTON: We do have an objection to this
08:51:53 2 one. This is a document that plaintiffs had the wrong
08:51:54 3 organization and Dr. Wailes had never seen it before.

08:51:59 4 THE COURT: 28217. I don't really remember
08:52:03 5 this. If he's never seen it --

08:52:05 6 MR. WEINBERGER: Well, this was from the
08:52:07 7 American Academy of Pain Management that we had thought was
08:52:13 8 the American Academy of Pain Medicine publication. Later
08:52:20 9 on, he testified that he was board certified by the American
08:52:32 10 Board of Pain Management.

08:52:33 11 THE COURT: All right. This comes in over
08:52:34 12 objection, because he's board certified by that
08:52:36 13 organization.

08:52:37 14 MS. FUMERTON: Well, Your Honor, the
08:52:38 15 plaintiffs used it in a way that was completely misleading
08:52:40 16 because they thought that it was the right -- the wrong
08:52:43 17 organization. So we don't think it would be appropriate to
08:52:46 18 come in --

08:52:47 19 THE COURT: Let me see the letter.

08:52:48 20 MR. WEINBERGER: It was later corrected.

08:52:50 21 THE COURT: It was corrected. At first there
08:52:52 22 was a confusion, and I wouldn't have admitted it then, but
08:52:54 23 then when he -- he's -- it's on his resume that he's board
08:52:59 24 certified by this organization, so it comes in over
08:53:01 25 objection.

08:53:04 1 MS. FUMERTON: Your Honor, just -- I hear you,
08:53:07 2 but my one last ditch effort on this is that, I mean, this
08:53:11 3 really is something that I think would be very confusing to
08:53:13 4 the jury because there was originally questioning by
08:53:16 5 Mr. Lanier suggesting that he was involved with this
08:53:20 6 organization at this point in time, and he was not. He was
08:53:22 7 board certified years earlier.

08:53:24 8 THE COURT: That's the problem, is that now
08:53:26 9 that I remember it, it was introduced because the doctor is
08:53:35 10 in leadership in an organization. He's on the Board. He's
08:53:40 11 been in leadership for a long time, and the American Academy
08:53:50 12 of Pain Medicine. All right. I'm not going to allow this
08:53:52 13 in.

08:53:52 14 MR. WEINBERGER: Okay.

08:53:54 15 THE COURT: It's not -- I'm denying it, not
08:53:56 16 in.

08:53:59 17 All right. 18314.

08:54:04 18 MS. FUMERTON: So, Your Honor, I think we, and
08:54:05 19 Mr. Weinberger can correct me, I think we have a deal on
08:54:08 20 this one. If you don't object to that one, we'll let those
08:54:10 21 two pages come in.

08:54:11 22 MR. WEINBERGER: Okay, fine.

08:54:13 23 So here -- this is the publication from the United
08:54:19 24 States Senate Finance Committee. We used I think two pages
08:54:23 25 of a chart that shows the contributions, the corporate

08:54:29 1 contributions to the American Academy of Pain -- something.

08:54:31 2 THE COURT: Right.

08:54:32 3 MR. WEINBERGER: Management or Medicine.

08:54:33 4 THE COURT: Just those pages are coming in?

08:54:35 5 MR. WEINBERGER: Well, we would want the first

08:54:37 6 page of the document, which shows the title of what it is.

08:54:40 7 THE COURT: All right.

08:54:40 8 MR. WEINBERGER: And then we would want, is

08:54:44 9 it 28A29?

08:54:44 10 MS. FLEMING: 28 and 29.

08:54:49 11 MR. WEINBERGER: Oh, pages 28 and 29 of the

08:54:52 12 document.

08:54:53 13 THE COURT: All right. Pages 1, 28, and 29

08:54:55 14 only.

08:54:55 15 MR. WEINBERGER: Pages 28 and 29.

08:54:57 16 THE COURT: I thought you wanted page 1.

08:54:59 17 MR. WEINBERGER: 1, 28, and 29, right.

08:55:02 18 THE COURT: All right. 02999, DEA joint

08:55:07 19 statement. Any objection?

08:55:08 20 MS. FUMERTON: No objection, Your Honor.

08:55:09 21 THE COURT: 21873.

08:55:11 22 MS. FUMERTON: No objection.

08:55:12 23 THE COURT: All right. 21871.

08:55:16 24 MS. FUMERTON: No objection.

08:55:17 25 THE COURT: 21872.

08:55:20 1 MS. FUMERTON: No objection.

08:55:21 2 THE COURT: 19616.

08:55:24 3 MS. FUMERTON: No objection.

08:55:25 4 I'll just point out for Walgreens, this is the
08:55:27 5 Walgreens document.

08:55:28 6 THE COURT: Walgreens have any objection?

08:55:31 7 MS. SWIFT: No objection, Your Honor.

08:55:33 8 THE COURT: Okay. Thank you.

08:55:34 9 15656. This looks to be a CVS document.

08:55:39 10 MR. DELINSKY: No objection, Your Honor.

08:55:40 11 THE COURT: Thank you.

08:55:42 12 21867.

08:55:45 13 MS. FUMERTON: No objection, Your Honor.

08:55:46 14 THE COURT: Thank you.

08:55:46 15 And 00021.

08:55:49 16 MS. FUMERTON: No objection, Your Honor.

08:55:53 17 THE COURT: Do the defendants have any
08:55:54 18 documents for Dr. Wailes?

08:55:59 19 MS. FUMERTON: I do, Your Honor.

08:56:03 20 THE COURT: All right. Have the plaintiffs
08:56:05 21 looked at this? Do you have any --

08:56:08 22 MR. WEINBERGER: Yes, Your Honor. Our only
08:56:09 23 objection is to the first exhibit, 11776.

08:56:15 24 THE COURT: All right.

08:56:16 25 MR. WEINBERGER: This is a journal article

08:56:17 1 that we object to. Journal articles generally do not go to
08:56:25 2 the jury.

08:56:26 3 MS. FUMERTON: And, Your Honor, I think other
08:56:28 4 journal articles have gone back, so we would request that
08:56:33 5 this go back as well.

08:56:35 6 THE COURT: Well, I think some other ones have
08:56:36 7 gone back, so I'll admit this over objection.

08:56:40 8 And these others come in without objection: 02457,
08:56:51 9 01005, 01355, 11040, 11963, and 05689. Okay.

08:57:09 10 And then we've got a series of documents plaintiffs
08:57:14 11 are offering with Ms. Hiland. I don't know, I assume the
08:57:17 12 defendants -- it's your witness. I assume you've got some.

08:57:21 13 MS. FUMERTON: Your Honor, we do. We
08:57:22 14 exchanged lists last night. If we could --

08:57:24 15 THE COURT: You're still working on those?

08:57:27 16 MS. FUMERTON: Yeah, we haven't had a chance
08:57:28 17 to do that.

08:57:29 18 THE COURT: All right. Then we'll take those
08:57:30 19 up later.

08:57:33 20 I guess Mr. Edwards is still on, so we'll take care of
08:57:36 21 him afterward.

08:57:42 22 Okay. Yesterday I submitted the latest draft of the
08:57:47 23 proposed final jury instructions and verdict forms. We
08:57:52 24 eliminated all references to distribution because those
08:57:58 25 claims are out.

08:58:04 1 So at this point I only want something from the
08:58:07 2 parties if you think that there's anything in there that is
08:58:12 3 wrong. If so, just say, all right, this sentence is wrong
08:58:16 4 and here's the federal or state case that says it's wrong,
08:58:20 5 and this is what we propose instead.

08:58:24 6 Or if you think that a sentence is just confusing and
08:58:28 7 doesn't make sense and you've got a better way to say it,
08:58:32 8 all right, submit that. And I want those no later than
08:58:38 9 we'll just say 4:00 on Friday. And then if anyone wants to
08:58:44 10 reply or respond to it, do it by Monday, because I want to
08:58:47 11 get those in shape.

08:58:48 12 And again, I don't -- I'm not, you know, encouraging
08:58:52 13 anything, but certainly if you think we've got something
08:58:55 14 wrong, I want to know it and why. And if you think there's
08:59:00 15 something in there that just is confusing or inconsistent,
08:59:04 16 or is going to -- you know, the jury's going to have a
08:59:09 17 question about it because they can't understand it, I'm
08:59:12 18 always -- we can always improve the language, so let's
08:59:18 19 address that.

08:59:18 20 MR. DELINSKY: Your Honor, if we have a minute
08:59:20 21 or two, could I flag one issue for you?

08:59:22 22 THE COURT: Okay.

08:59:23 23 MR. DELINSKY: But if we don't, that's okay.

08:59:25 24 THE COURT: We've got one or two minutes.

08:59:27 25 MR. DELINSKY: In the dispensing instruction,

08:59:29 1 the -- and I don't know if I have the wording right, that
08:59:35 2 CSA rules on dispensing.

08:59:36 3 THE COURT: Right.

08:59:36 4 MR. DELINSKY: Your Honor uses the word
08:59:39 5 "ensure," a pharmacist and a pharmacy has to ensure that the
08:59:44 6 prescriptions are legitimate.

08:59:45 7 That's one area where we're going to -- among others,
08:59:48 8 we're going to put something in, because that deviates from
08:59:51 9 the regulatory language in both jurisdictions, both the CSA
08:59:59 10 and the Ohio analog to it, which both have the "knowing"
09:00:02 11 standard.

09:00:03 12 And there is some dispute, I would imagine, about what
09:00:05 13 that knowing standard means, but there nevertheless is a
09:00:09 14 mens rea state of mind standard in both regulations that
09:00:14 15 doesn't appear in that instruction.

09:00:15 16 So I just wanted to highlight it because it comes --
09:00:19 17 "ensure" is shorthand, we all use it, all our clients use
09:00:23 18 it, everybody in the industry uses it, but it's just
09:00:25 19 shorthand, and it does deviate from that plain language.

09:00:28 20 So I just wanted to highlight that for Your Honor.

09:00:30 21 THE COURT: Well, that's probably why we used
09:00:35 22 it, because everyone uses it.

09:00:37 23 MR. DELINSKY: Yeah, that's what I was
09:00:38 24 thinking too.

09:00:39 25 THE COURT: If you think it's, Mr. Delinsky,

09:00:42 1 legally incorrect, point that out and what you suggest.

09:00:46 2 Certainly we'll look at it.

09:00:47 3 MR. DELINSKY: Okay. Thank you, Your Honor.

09:00:51 4 That's what we'll do.

09:00:52 5 THE COURT: You can discuss it with the
09:00:53 6 plaintiffs. If they agree, it's even better if you agree on
09:00:57 7 it. I want it obviously legally correct and I want it
09:01:03 8 intelligible, understandable to lay people. That's the
09:01:05 9 idea.

09:01:06 10 MR. STOFFELMAYR: Judge, Kaspar Stoffelmayr
09:01:08 11 for Walgreens.

09:01:09 12 I would suggest we do this in a different filing. We
09:01:12 13 obviously need to submit something to preserve objections on
09:01:15 14 issues that you've already decided. As I understand the --
09:01:18 15 I would like our Friday submission to focus on issues that
09:01:21 16 we think you may not have, you know, realized or taken into
09:01:25 17 account.

09:01:26 18 THE COURT: Yeah, anything that you -- I mean,
09:01:27 19 you can file whatever you need. I mean, the time then is --
09:01:34 20 would be right before I do it or right after, whatever, but
09:01:37 21 this is if you really think -- --

09:01:38 22 MR. STOFFELMAYR: Understood.

09:01:40 23 THE COURT: -- something new that's come up
09:01:43 24 or -- I mean, if you think that something is just flat out
09:01:45 25 wrong, I mean, that I might reconsider, do it.

09:01:49 1 MR. STOFFELMAYR: I just wanted to confirm.
09:01:50 2 It sounds like everyone is taking this the same way. The
09:01:53 3 Friday submission will be things that we have not previously
09:01:56 4 raised with you.

09:01:57 5 THE COURT: Right.

09:01:57 6 MR. STOFFELMAYR: Or we think you just
09:01:58 7 misunderstood, versus issues that you've decided. We
09:02:01 8 understand your decision, we just need to preserve our
09:02:03 9 record.

09:02:11 10 THE COURT: Thank you, Mr. Stoffelmayr. That
09:02:14 11 was my intention. I wasn't as clear as I should have been.

09:02:16 12 Okay. Then I guess we can bring back Mr. Edwards.

09:02:23 13 Oh, yesterday's time, I had 2 hours for the plaintiffs
09:02:26 14 and 4.75 for the defendants.

09:04:21 15 (The jury is present at 9:04 a.m.)

09:04:44 16 THE COURT: Good morning, ladies and
09:04:45 17 gentlemen. Please be seated.

09:04:46 18 Mr. Edwards, I just want to remind you, you're still
09:04:48 19 under oath from yesterday.

09:04:51 20 We tried to adjust the seat, but we're not able to do
09:04:56 21 it, and I don't want to make it worse. So we apologize.

09:05:00 22 THE WITNESS: No worries.

09:05:01 23 THE COURT: Mr. Swanson, you may continue,
09:05:02 24 please.

09:05:05 25 MR. SWANSON: Thank you, Your Honor.

09:05:06 1 Good morning, ladies and gentlemen.

09:05:07 2 Agent Edwards, thank you for coming back in this
09:05:10 3 morning to answer a few more questions.

09:05:12 4 TREY EDWARDS

09:05:12 5 - - - - -

09:05:12 6 DIRECT EXAMINATION (CONT'D)

09:05:13 7 BY MR. SWANSON:

09:05:13 8 **Q** I want to turn now to the last area that I would like
09:05:16 9 to cover with you, which is inspections that you conducted
09:05:19 10 of the retail chain pharmacies when you were an agent -- in
09:05:24 11 your current role as an agent for the Board of Pharmacy,
09:05:28 12 okay?

09:05:28 13 **A** Okay.

09:05:29 14 **Q** I think yesterday you said that in your current role
09:05:33 15 you've moved away a bit from inspecting pharmacies. Is that
09:05:37 16 true?

09:05:37 17 **A** That's correct.

09:05:37 18 **Q** When is the last time that you conducted an
09:05:42 19 investigation of any pharmacy?

09:05:43 20 **A** An investigation of the pharmacy or investigation at a
09:05:50 21 pharmacy?

09:05:50 22 **Q** I misspoke, and I'm sorry. I've done that before and
09:05:53 23 I'll try not to do it again.

09:05:54 24 An inspection of a pharmacy.

09:05:56 25 **A** Well, I've done a couple my role currently, but

09:06:04 1 they're more of like a cursory, you know, I may need one or
09:06:07 2 two things from a pharmacy, so not a full scale inspection.
09:06:10 3 It's been probably three years since I did a full routine
09:06:15 4 inspection.

09:06:16 5 **Q** But going back three years and then back to the time
09:06:18 6 you started at the Board of Pharmacy, were routine
09:06:22 7 inspections a pretty common part of your job?

09:06:26 8 **A** Yes, yes. They were much more common when I first got
09:06:29 9 hired, not just because of the role I'm in now, but because
09:06:31 10 we've -- the Board of Pharmacy hired another class of
09:06:37 11 employee called an inspector, and those are -- those are
09:06:40 12 generally pharmacy technicians who they handle the majority
09:06:46 13 of the retail inspections now. And that happened around the
09:06:50 14 time that I entered this new role, maybe a couple years
09:06:54 15 before.

09:06:55 16 **Q** Got it, okay.

09:06:56 17 So three, four years ago there was sort of a new role
09:06:59 18 that was established by the Board of Pharmacy?

09:07:00 19 **A** Correct.

09:07:01 20 **Q** Understood.

09:07:02 21 Well, I want to focus, if we can, on inspections that
09:07:05 22 you conducted.

09:07:06 23 **A** Sure.

09:07:07 24 **Q** Were the pharmacy inspections that you conducted, were
09:07:12 25 they all done on site?

09:07:14 1 **A** Yes.

09:07:18 2 **Q** Were the inspections that you'd done, were they
09:07:21 3 announced or were they unannounced?

09:07:22 4 **A** Primarily unannounced. Occasionally, if we had an
09:07:27 5 issue, such as like an error in dispensing, we would want to
09:07:30 6 verify that the pharmacist who was involved in that would be
09:07:33 7 at the store, so we would -- that might be announced. But
09:07:36 8 the regular routine inspections that we did were generally
09:07:40 9 unannounced.

09:07:41 10 **Q** How long in your practice would a typical pharmacy
09:07:45 11 inspection last?

09:07:46 12 **A** I would say a couple hours.

09:07:48 13 **Q** How many -- and this might be sort of on average, but
09:07:52 14 how many pharmacies in general would you personally inspect
09:07:55 15 in a given year?

09:07:56 16 **A** We had a, I guess you could say, quota that we would
09:08:03 17 do around 50. It varied in the years that I was there. I
09:08:11 18 think it was at one point 55, maybe 50. So it was ballpark
09:08:15 19 50 a year.

09:08:15 20 **Q** So in general about one a week?

09:08:17 21 **A** In general. Some -- you know, depending on caseload
09:08:20 22 and stuff like that, you may do three in a week and none for
09:08:23 23 two weeks, but generally that was a good average.

09:08:28 24 **Q** And can you remind me what counties you were
09:08:30 25 responsible for with your inspections?

09:08:31 1 **A** When I was first hired, it was Lake, Geauga,
09:08:36 2 Ashtabula, and Portage; and at various times I've been
09:08:40 3 responsible for Cuyahoga, the counties down towards
09:08:43 4 Youngstown, Trumbull, Mahoning.

09:08:46 5 It's just, generally speaking, those first four
09:08:51 6 counties I mentioned, but it's varied over the years based
09:08:54 7 on the numbers of employees we've had and retirements, and
09:08:57 8 things like that.

09:08:57 9 **Q** How would you decide which specific pharmacies you
09:09:01 10 were going to inspect on a given day, week, or year?

09:09:03 11 **A** Typically, it was based on time since last inspection.
09:09:08 12 So, for instance, when I was hired, that was primarily what
09:09:13 13 I did, because I didn't have a caseload, you know, of
09:09:17 14 criminal investigations, so I did -- I think I did every
09:09:22 15 retail pharmacy in my jurisdiction. I did that first year I
09:09:25 16 was hired, and then from there it was based on how long it
09:09:29 17 had been since I was at a given place.

09:09:31 18 **Q** Were these inspections that you conducted, were they
09:09:33 19 the only point of contact you had with the pharmacies, or
09:09:37 20 were there other circumstances where you'd go in and visit
09:09:39 21 the pharmacies?

09:09:40 22 **A** There were other issues with criminal investigations
09:09:44 23 or things like that, where we would call if we had a
09:09:46 24 question about something or, you know, needed a particular
09:09:50 25 prescription. Maybe we had already done an inspection at

09:09:53 1 that pharmacy within the past few months, but we needed a
09:09:55 2 prescription for an investigation, so we would go in and get
09:09:59 3 the prescription, and maybe talk to the pharmacist.

09:10:01 4 **Q** Over the course of your career, have you inspected
09:10:05 5 every Walgreens pharmacy in Lake County?

09:10:07 6 **A** I believe so.

09:10:08 7 **Q** Every CVS pharmacy?

09:10:11 8 **A** I believe so.

09:10:11 9 **Q** And every Walmart pharmacy?

09:10:13 10 **A** Yes, I believe so.

09:10:14 11 **Q** Can you tell us what a typical inspection was like for
09:10:19 12 you personally? Take us from walking in the door to leaving
09:10:22 13 with a report.

09:10:23 14 **A** Sure. So we had a -- in the early days we had a
09:10:29 15 triplicate paper that had on the left side of the paper it
09:10:35 16 had -- it was kind of like an outline of things that we
09:10:38 17 would look at. It was maybe, like, 30 or 40 different
09:10:43 18 topics.

09:10:45 19 And we would go through at least the first 10, and
09:10:50 20 then there were others that we would sometimes focus on,
09:10:55 21 or -- it was up to the discretion of the agent usually what
09:10:59 22 they were going to look at. We very rarely looked at every
09:11:03 23 single, you know, topic on the sheet, but we would look at
09:11:07 24 the first 10 and then kind of skip around and look at
09:11:11 25 different things.

09:11:11 1 Q Okay. And during your inspections, were you allowed
09:11:16 2 access to any records or files that you thought you needed
09:11:18 3 to review in order to conduct your inspection?

09:11:20 4 A Yes.

09:11:21 5 Q And in general, speaking about Walgreens, how did the
09:11:26 6 pharmacists there respond to your requests for documents,
09:11:29 7 data, information?

09:11:31 8 A Well, all pharmacies that I went into were cooperative
09:11:36 9 and accommodating.

09:11:38 10 Q When you would do these inspections, would you look at
09:11:42 11 the dispensing systems that the pharmacists and pharmacies
09:11:44 12 were using?

09:11:45 13 A General, like, overview. We would ask them the type
09:11:52 14 of software that they were using and occasionally would have
09:11:55 15 them walk us through -- I guess at the beginning have them
09:12:01 16 walk us through what they would do when they would fill a
09:12:05 17 prescription. But then once you've been in one retail
09:12:07 18 store, you've kind of been in them all in the sense that
09:12:10 19 they have the same computer system; not across the board
09:12:15 20 but, like, one Walgreens versus another Walgreens.

09:12:17 21 It's the same -- you know, the same computer system.
09:12:21 22 So after a while you kind of knew what they were doing, so
09:12:25 23 those questions became less frequent for more experienced
09:12:29 24 agents like myself, because we already knew the answers.

09:12:31 25 Q So through your inspections of Walgreens, I take it

09:12:33 1 you had an understanding of the dispensing system they used?

09:12:36 2 **A** Yes.

09:12:39 3 **Q** And do you recall what it's called?

09:12:40 4 **A** No, I don't.

09:12:42 5 **Q** IntercomPlus, does that ring a bell?

09:12:45 6 **A** Yes, yes.

09:12:45 7 **Q** Were the pharmacies, not just the retail chains, but
09:12:50 8 were all pharmacies required to have their dispensing system
09:12:53 9 approved?

09:12:53 10 **A** Yes.

09:12:53 11 **Q** And who was it that was responsible for that approval?

09:12:57 12 **A** That would be one of our specialists.

09:12:58 13 **Q** At the Board of Pharmacy?

09:12:59 14 **A** Yes.

09:13:00 15 **Q** During your inspections, was it your practice to look
09:13:08 16 at actual prescriptions?

09:13:09 17 **A** Sometimes, yes.

09:13:10 18 **Q** And describe that for me.

09:13:12 19 **A** Looking at the prescriptions, I mean, I -- we would --
09:13:16 20 during an inspection we would typically go through the
09:13:22 21 control file, like the control prescriptions, and look
09:13:25 22 through, you know, not necessarily looking for a certain
09:13:30 23 prescription, but at a routine inspection maybe flip through
09:13:34 24 and look for different things to make sure the prescriptions
09:13:37 25 were being filled out appropriately, make sure the DEA

09:13:39 1 number was on there, make sure the doctor was signing them
09:13:42 2 and, you know, the directions were written appropriately,
09:13:46 3 and things like that.

09:13:47 4 **Q** And if those things weren't being done properly, would
09:13:50 5 you make a note of that?

09:13:50 6 **A** Yes.

09:13:51 7 **Q** What about if a store or pharmacy had a file of
09:13:59 8 refusals to fill, did you ever experience that?

09:14:01 9 **A** I don't recall seeing that, no.

09:14:03 10 **Q** As a Board of Pharmacy agent, what did you view -- or
09:14:10 11 what did you view as the purpose of your inspections?

09:14:14 12 **A** It was to maintain accountability for the pharmacies
09:14:21 13 and, you know, also maybe like a PR visit; like getting to
09:14:25 14 know the pharmacists and letting them know we're there if
09:14:28 15 they need our assistance, and, you know, answering any
09:14:31 16 questions they may have because they didn't have time to
09:14:34 17 call, and here we are, what do you need.

09:14:40 18 **Q** And as you continued in your role at the Board of
09:14:43 19 Pharmacy, did you find that you had a good relationship with
09:14:46 20 the pharmacies and pharmacists at Walgreens?

09:14:48 21 **A** Yes.

09:14:48 22 **Q** And at CVS?

09:14:49 23 **A** Yes.

09:14:49 24 **Q** And at Walmart?

09:14:50 25 **A** Yes.

09:14:50 1 Q Was it important to you as a Board of Pharmacy agent
09:14:55 2 to ensure that the pharmacies you inspected were complying
09:14:58 3 with the Ohio laws?

09:14:59 4 A Yes.

09:14:59 5 Q And the Ohio regulations?

09:15:02 6 A Yes.

09:15:02 7 Q What would you do if you discovered that a pharmacist
09:15:10 8 was not complying with the state or federal laws regarding
09:15:13 9 dispensing or pharmacy?

09:15:14 10 A Well, it would depend. There were various levels
09:15:17 11 of -- you know, we may just -- it may be, Hey, did you know
09:15:20 12 you did this incorrectly, fix it; or if it was a more
09:15:26 13 egregious thing or if it was something that was happening
09:15:29 14 repeatedly, it may warrant a written warning on our
09:15:32 15 inspection form that they would have to respond to.

09:15:36 16 Or something that is more egregious may result in a
09:15:40 17 citation from our Board, where they have to come to the
09:15:43 18 Board office and explain, you know, explain for our Board
09:15:47 19 what was going on and why it happened, and answer their
09:15:51 20 questions.

09:15:52 21 Q Could the Board of Pharmacy revoke the license of a
09:15:55 22 pharmacy if it wasn't complying with the state or federal
09:15:57 23 laws?

09:15:58 24 A Yes.

09:15:58 25 Q During your time at the Board of Pharmacy, are you

09:16:03 1 aware of any Walgreens pharmacy in Lake or Trumbull County
09:16:06 2 having their license revoked by the Board of Pharmacy?

09:16:09 3 **A** In Lake County, I don't believe so. Trumbull, I'm not
09:16:14 4 sure. I didn't have a lot of experience in Trumbull County.

09:16:16 5 **Q** Okay. How about any CVS pharmacy in Lake County?

09:16:19 6 **A** Not to my knowledge.

09:16:19 7 **Q** Any Walmart pharmacy?

09:16:25 8 **A** Not to my knowledge.

09:16:25 9 **Q** Just in general, how would you describe the
09:16:27 10 inspections that you conducted of the Walgreens pharmacies
09:16:30 11 in Lake County?

09:16:30 12 **A** In general, I did say that they were fine. I don't
09:16:35 13 remember having any issues or, you know, any -- nothing that
09:16:38 14 stands out in my mind.

09:16:42 15 **Q** I want to just turn to a couple specific examples so
09:16:47 16 you can walk us through and help us understand the process
09:16:49 17 here.

09:16:50 18 **A** Okay.

09:16:50 19 **Q** If you look in your binder behind Tab 6, it's the
09:16:55 20 first one I want to ask you about.

09:16:56 21 **A** Okay.

09:16:56 22 **Q** And does the document, Tab 6, look familiar to you?

09:17:01 23 **A** Generally speaking, yes.

09:17:02 24 **Q** Okay. And can you tell us what it is?

09:17:07 25 **A** It's a copy of our inspection report that was

09:17:09 1 completed on June 24, 2014.

09:17:11 2 **Q** And is that your signature on the bottom right?

09:17:14 3 **A** Yes.

09:17:15 4 **Q** Okay. Let me put this up so we can see it.

09:17:21 5 Okay. So just for the record, we're looking at
09:17:25 6 Defendants' Exhibit WAG-MDL-1102. And I think you got this
09:17:33 7 in, but the date of inspection was the June 24 of '14?

09:17:38 8 **A** Correct.

09:17:38 9 **Q** And earlier in your testimony you described the
09:17:40 10 triplicate written report. Is this an example of that?

09:17:46 11 **A** Yes. And actually, I guess it was quadruplicate. It
09:17:52 12 was four sheets.

09:17:53 13 **Q** Okay. It was harder to press down.

09:17:55 14 **A** Yeah.

09:17:55 15 **Q** And can you tell me by looking at this how long this
09:17:59 16 inspection lasted?

09:18:00 17 **A** This was an hour and a half.

09:18:02 18 **Q** And I can see on the left side there, there are some
09:18:07 19 personnel that are listed.

09:18:09 20 Do you see those names?

09:18:10 21 **A** Yes.

09:18:10 22 **Q** Who are they?

09:18:11 23 **A** That would be the employees that were at the pharmacy,
09:18:16 24 the pharmacists and pharmacy technicians.

09:18:19 25 **Q** And in looking at those names, I see Julie Demay. I

09:18:24 1 think we talked about her yesterday.

09:18:25 2 **A** Yes.

09:18:25 3 **Q** Do you remember Ms. Racz or "Racz"?

09:18:30 4 **A** I don't recall her, no.

09:18:32 5 **Q** So I want to just blow up here, I think this is what
09:18:37 6 you referenced before.

09:18:41 7 **A** Yes.

09:18:41 8 **Q** So there I think you called it sort of an outline?

09:18:44 9 **A** Yes.

09:18:44 10 **Q** And is this the list that you were referring to?

09:18:46 11 **A** Yes.

09:18:46 12 **Q** And when we talked to Mr. Pavlich, we showed an
09:18:54 13 example of this too. I wanted to ask you, the list that we
09:19:00 14 looked at with Pavlich had 37 items. It looks like this has
09:19:05 15 40. Do you recall any changes to the topics when you were
09:19:07 16 at the Board of Pharmacy?

09:19:09 17 **A** Yes, they changed with every printing of this form.

09:19:15 18 They would add new things and take off a few things based
09:19:19 19 on, you know, the evolution of our rules and laws.

09:19:24 20 **Q** Okay. And I don't want to go through all these
09:19:25 21 because we talked about a lot of them with Mr. Pavlich, but
09:19:29 22 I did want to ask you, if you look down here at 39, there's
09:19:34 23 a reference to OARRS.

09:19:36 24 Do you see that?

09:19:36 25 **A** Yes.

09:19:36 1 Q What does that box signify?

09:19:39 2 A That's -- to me, that would signify generally are they
09:19:44 3 signed up for OARRS, are they using OARRS. Do they know
09:19:48 4 about -- in the early days it was do they know about OARRS,
09:19:51 5 and we were just trying to get the word out, you know,
09:19:53 6 before it was mandatory to check it, it was more or less get
09:19:58 7 the word out: Hey, have you heard about our OARRS system?
09:20:02 8 Do you know about it? Do you have any questions? Do you
09:20:04 9 use it? If you don't use it, we encourage you to use it.

09:20:08 10 So, and then as it evolved, it was more making sure
09:20:11 11 that they were checking OARRS because they were required to
09:20:16 12 and, you know, making sure all the pharmacists were signed
09:20:18 13 up for OARRS, that they were checking it regularly, and that
09:20:21 14 sort of thing.

09:20:23 15 Q And if a pharmacy wasn't properly using or consulting
09:20:26 16 OARRS, would you make a note of that?

09:20:28 17 A Yes.

09:20:29 18 Q I want to just go through a few pages here and ask you
09:20:33 19 some questions about things that you wrote.

09:20:35 20 A Sure.

09:20:35 21 Q So let me go to I think it's going to be the third
09:20:39 22 page, but I'll blow it up.

09:20:48 23 Okay. I guess it ends in 84. Do you see what I'm
09:20:50 24 looking at here?

09:20:51 25 A Page 3 of 4? Yeah.

09:20:57 1 Q Okay. And I might need to split my screens here.

09:21:00 2 Give me one moment.

09:21:06 3 So it may continue to the next page, but I wanted to
09:21:11 4 ask you about, do you see at the bottom there there is --
09:21:14 5 it's marked 23?

09:21:17 6 A Yes.

09:21:17 7 Q And can you just read -- I don't want to get it wrong,
09:21:20 8 so can you just read to me what you wrote? It continues on
09:21:24 9 to the next page.

09:21:24 10 A Sure. "Approximately 250 prescriptions per day.
09:21:29 11 Accrued prescriptions checked, properly contain prescriber
09:21:33 12 DEA, quantity and alpha numeric format, patient full name
09:21:37 13 and residential address."

09:21:39 14 Those are some of the things that are required that
09:21:44 15 are included on a prescription. So in this situation, you
09:21:50 16 know, I explained how we would go through the Schedule IIs
09:21:53 17 or the III through Vs. They had separate files at the
09:21:57 18 pharmacy. Schedule IIs were in one file, Schedule III
09:22:02 19 through Vs are in another. So sometimes we would pull a
09:22:05 20 file of C-Iis and just flip through like one California
09:22:09 21 folder of them, other times we'd pick the III through Vs.

09:22:13 22 In this instance I believe I picked a file of C-IIs
09:22:16 23 and I flipped through them, and that's what I -- that's what
09:22:19 24 I noted.

09:22:19 25 Now, that's not to say that I checked all of the C-IIs

09:22:23 1 in the pharmacy that day.

09:22:24 2 **Q** Understood.

09:22:25 3 **A** It was just a small sample that I -- and generally
09:22:30 4 within the past month or two, I would grab one of the
09:22:34 5 folder -- file folders that was in the pharmacy.

09:22:36 6 **Q** Got it. Thank you. And I actually had one more
09:22:39 7 question on the outline.

09:22:41 8 Do you see at the bottom there on the left-hand side
09:22:43 9 it says, full or partial?

09:22:44 10 **A** Yes.

09:22:44 11 **Q** Can you tell us what that means?

09:22:46 12 **A** Well, that's if you're there for one or two issues or
09:22:54 13 there to pick up a prescription and you look at a few
09:22:58 14 different things, we would consider that a partial
09:22:59 15 inspection.

09:23:01 16 A full is when you go through the majority of the list
09:23:04 17 on the left and go through all those issues and document
09:23:09 18 what you see.

09:23:13 19 **Q** And I've seen in prior examples there was an F and a
09:23:18 20 P. Does that stand for full or partial?

09:23:23 21 **A** Full or partial, yes.

09:23:24 22 **Q** Not pass or fail?

09:23:25 23 **A** Correct, and that's why they spelled it out on this
09:23:29 24 version.

09:23:29 25 **Q** Right. Pharmacists were feeling bad about their full

09:23:34 1 inspections.

09:23:35 2 Okay. Let me ask you about another -- this is on the
09:23:38 3 later page here. Number 26, can you read to make sure I get
09:23:51 4 that right?

09:23:51 5 **A** Yes. "Three-part filing system." That refers to the
09:23:56 6 C-IIs were in one file, the C-III through Vs were in
09:24:00 7 another; and then the dangerous drugs, the noncontrolled
09:24:03 8 substances, were in a third file.

09:24:05 9 "The good faith dispensing checklist filed with
09:24:09 10 controlled Rx's when an OARRS report was run."

09:24:13 11 So at this Walgreens and at most Walgreens, to my
09:24:18 12 recollection, when they would -- I'm not sure when it
09:24:20 13 started, but clearly it was going on in 2014, when they
09:24:22 14 would run a -- or when they would fill a controlled
09:24:27 15 substance prescription, they would complete this good faith
09:24:30 16 dispensing checklist, which was a Walgreens internal form
09:24:36 17 that their pharmacists would go through when deciding if
09:24:38 18 they were going to fill a controlled substance prescription
09:24:41 19 or not.

09:24:42 20 And in this case, they would go through that checklist
09:24:45 21 and then staple it to the prescription, and then file it in
09:24:49 22 the file with the prescription.

09:24:50 23 **Q** And was it your practice to inspect those good faith
09:24:53 24 checklists?

09:24:53 25 **A** If they were there, yes. It was not something we

09:24:56 1 required, so if it was there in the file, we would check it.

09:24:58 2 If it wasn't, we wouldn't.

09:24:59 3 **Q** When you say it's not something we require, do you
09:25:02 4 mean the Board of Pharmacy didn't require these checklists?

09:25:05 5 **A** Correct. They required them to make sure, you know,
09:25:09 6 to use their judgment and make sure a prescription was for
09:25:16 7 legitimate medical purpose, but they did not require that
09:25:20 8 detailed checklist.

09:25:20 9 **Q** And if during your inspection you discovered that
09:25:22 10 pharmacists weren't using their judgment to make sure that a
09:25:26 11 prescription was for a legitimate medical purpose, would you
09:25:29 12 make a note of that?

09:25:30 13 **A** Yes.

09:25:30 14 **Q** Just one more question that I had for you on this
09:25:37 15 page.

09:25:40 16 Number 28, can you tell us what you're writing there?

09:25:43 17 **A** Yes. It says, "RPh," pharmacist, "initials hard copy
09:25:49 18 controlled prescriptions to show positive identification."

09:25:53 19 So that means that to show the positive ID they sign
09:25:56 20 the back of the prescription, and then you know who the
09:25:58 21 pharmacist was that filled it.

09:26:04 22 **Q** Now, based on this report that we're looking at,
09:26:08 23 following the inspection that you conducted, did you reach
09:26:10 24 any conclusions as to whether this specific pharmacy was
09:26:13 25 complying with the laws of Ohio?

09:26:16 1 **A** Based on this inspection, they seemed to be compliant
09:26:21 2 at the time I was there because no pink sheet was issued.
09:26:25 3 We would issue a pink sheet, or another word for that is a
09:26:29 4 written warning, if we found issues that needed to be
09:26:33 5 addressed.

09:26:33 6 **Q** And if you issued a written warning or a pink slip,
09:26:37 7 what was your expectation of the pharmacy or pharmacist?

09:26:40 8 **A** That they would take corrective action to fix whatever
09:26:43 9 the problem was and then respond to us, I think at this time
09:26:49 10 it was within 20 days. I think now it's a month. But they
09:26:54 11 would have 20 days to a month to provide a written response
09:26:57 12 as to what corrective action they took regarding that issue.

09:27:00 13 **Q** And can you recall any instances where -- at a
09:27:04 14 Walgreens where you had any issues or concerns that you
09:27:07 15 noted during an inspection that weren't resolved to your
09:27:12 16 satisfaction?

09:27:12 17 **A** Not that I recall.

09:27:12 18 **Q** If you want to flip it to Tab 7, we'll go to the next
09:27:19 19 report I want to ask you about.

09:27:23 20 **A** Yup.

09:27:31 21 **Q** And let me ask you first -- I guess you've already
09:27:33 22 said this.

09:27:34 23 At some point did the inspection process become
09:27:36 24 automated?

09:27:37 25 **A** Yes, it became electronic.

09:27:39 1 Q Electronic. Excuse me.

09:27:42 2 A Yeah.

09:27:42 3 Q And at that point, did the form of the report change?

09:27:44 4 A Yes.

09:27:44 5 Q And can you tell us what Tab 7 is?

09:27:49 6 A Tab 7 is a copy of an inspection report completed at
09:27:55 7 Walgreens Number 4294 in Willoughby.

09:27:59 8 Q And if you look at I guess the second page in the
09:28:01 9 upper right, who conducted this inspection for the Board of
09:28:05 10 Pharmacy?

09:28:05 11 A Yes.

09:28:08 12 Q I'm sorry, who conducted it?

09:28:09 13 A I did.

09:28:10 14 Q Okay. Thanks.

09:28:11 15 A Yes.

09:28:11 16 Q Just let me put this up.

09:28:14 17 Okay. So for the record, this is Defendants' Exhibit
09:28:25 18 WAG-MDL-1061.

09:28:32 19 Can you tell us, when the inspection process went
09:28:38 20 automated or electronic, can you give me a sense for how
09:28:43 21 your inspections went at that time? Did you have a device
09:28:46 22 you carried around, or how did that work?

09:28:48 23 A Yes, we had a laptop, still have laptops that we
09:28:52 24 conduct the inspections on, and it's -- the system is called
09:28:56 25 Matrix Inspector. We have -- Matrix is the software we use

09:29:02 1 for both our criminal investigations as well as our
09:29:05 2 inspections. We have Matrix Investigator for the
09:29:10 3 investigations and Matrix Inspector for doing the
09:29:13 4 inspections.

09:29:14 5 So whereas when we use the four-page form and have the
09:29:22 6 guide on the left of the topics to cover, the questions came
09:29:26 7 from our head. You know, it was just how we had been
09:29:30 8 trained and the steps we had gone through doing inspections,
09:29:34 9 so we knew what to ask.

09:29:35 10 And then with the new format, the electronic format,
09:29:38 11 those questions are all built into the system. So as you go
09:29:44 12 through the inspection, the questions are right there, and
09:29:47 13 you just click through.

09:29:48 14 **Q** And is it drop-down boxes, do you enter text? How
09:29:51 15 does it work?

09:29:52 16 **A** Both.

09:29:52 17 **Q** If you look at the second page of this document, and I
09:29:58 18 think we've pointed this out before, on the top, that's your
09:30:01 19 name.

09:30:03 20 I wanted to ask you, how long did this inspection
09:30:06 21 take?

09:30:06 22 **A** This was 3 hours and 45 minutes.

09:30:09 23 **Q** And was there a reason that -- I mean, that seems
09:30:13 24 longer than what you said your average was. Was there a
09:30:16 25 reason in general why it might reach that time?

09:30:18 1 **A** It could vary. I could have been training someone
09:30:23 2 else and, you know, it took longer because they were asking
09:30:25 3 a bunch of questions; or, you know, I could have been
09:30:29 4 delayed because the pharmacist was busy and, you know, you
09:30:32 5 just had to wait till they had availability to answer your
09:30:35 6 questions. It just -- it varied.

09:30:37 7 **Q** Got it.

09:30:38 8 You actually raised something interesting. Let me ask
09:30:43 9 you.

09:30:44 10 You said you might have been training another agent.

09:30:48 11 I turned it now to the last page, 11 of 11.

09:30:51 12 **A** Yes.

09:30:51 13 **Q** And it lists the following personnel were present for
09:30:55 14 the inspection?

09:30:57 15 **A** Yes.

09:30:57 16 **Q** There's a name there, Greg McGlaun?

09:31:02 17 **A** Yes, Agent McGlaun. That answers my question, I must
09:31:06 18 have been training him. He was based in the Dayton area,
09:31:08 19 and I was his training agent around this time, I think 2016.

09:31:14 20 Yeah, so that's -- that tells me that that's why he
09:31:17 21 was with me, because I was training him.

09:31:19 22 **Q** I see, okay.

09:31:23 23 And you mentioned before that you might issue written
09:31:27 24 warnings with an inspection or what you called pink sheets.

09:31:30 25 **A** Yes.

09:31:30 1 Q And I note on here it says that the organization has
09:31:35 2 been warned and should fix any issues before they become a
09:31:38 3 problem?

09:31:38 4 A Yes.

09:31:39 5 Q And I've seen other reports where it requests a
09:31:45 6 written response, and this one doesn't.

09:31:48 7 Can you tell me or help me understand that?

09:31:51 8 A Yes. So when they went to the electronic format, they
09:31:55 9 added a result, I guess, of the inspection as "warning" but
09:32:02 10 not a written warning. So it was kind of in the middle of
09:32:05 11 everything's fine and a written warning. So more or less,
09:32:09 12 we may have noticed some things that we addressed with them,
09:32:12 13 but it didn't rise to the level of a written warning.

09:32:15 14 Q Okay. Let's go back then if we can to the second
09:32:27 15 page. I just want to ask you about a few examples here, and
09:32:29 16 then we'll be done.

09:32:31 17 A Sure.

09:32:31 18 Q So if you look -- I'm sorry, it's the third page.
09:32:46 19 Just to make sure that my terminology is clear here, there's
09:32:53 20 reference to ARKS?

09:32:56 21 A That's the -- yes, the Alternative Record Keeping
09:33:02 22 System.

09:33:02 23 Q And is that the system you said before is the one that
09:33:04 24 the pharmacies use that are approved by the Board of
09:33:07 25 Pharmacy?

09:33:07 1 **A** Yes.

09:33:07 2 **Q** And was it your practice to, when you went in, check
09:33:12 3 those systems and make sure that they were operating up to
09:33:17 4 date, that sort of thing?

09:33:19 5 **A** Yes.

09:33:19 6 **Q** And you have there the current version of ARKS. How
09:33:22 7 would you obtain that information?

09:33:23 8 **A** It was on -- I don't know if it was the startup screen
09:33:27 9 or -- there was a screen that the pharmacists could go to
09:33:30 10 that would show the version, you know, on the screen.

09:33:33 11 **Q** So does this signify that at least for this inspection
09:33:36 12 you'd gone in and turned on the computer and taken a look?

09:33:38 13 **A** Yeah. Well, they were always on. I never turned it
09:33:41 14 on.

09:33:41 15 **Q** Got it. Okay.

09:33:42 16 **A** I never touched the computer. I would ask the
09:33:46 17 pharmacist to show me different things.

09:33:48 18 **Q** Understood. Okay.

09:33:50 19 Let's go -- actually, let me go back a page. I'm
09:33:56 20 sorry for bouncing around.

09:33:58 21 **A** That's correct.

09:33:58 22 **Q** I didn't have to go back a page.

09:34:02 23 You talked about a warning that was maybe a more minor
09:34:05 24 thing, you wouldn't require a written response.

09:34:07 25 **A** Yes.

09:34:07 1 Q Can you see there Section 2.2?

09:34:11 2 A Yes.

09:34:11 3 Q And take a look at that. Can you tell us, was this
09:34:18 4 the sort of minor event that you might say, Hey, you've got
09:34:21 5 to fix this, but not require a written response?

09:34:23 6 A Yes. In fact, we no longer require them to carry the
09:34:26 7 ID cards on their person, so that tells you how minor of an
09:34:30 8 issue it was.

09:34:31 9 Q Got it. Okay. Thanks.

09:34:32 10 So let's, if we can, turn to page 9. Let me call out
09:34:56 11 a section here.

09:34:56 12 What are you noting there in reference to the
09:34:59 13 prescription files?

09:34:59 14 A If they keep a three separate system, which is, as I
09:35:04 15 explained, the Schedule IIs in one, the Schedule III through
09:35:08 16 Vs in another, and the dangerous drugs in another; and they
09:35:11 17 were doing that. And then are they in good order and filed
09:35:13 18 in a timely manner, and they were doing that as well.

09:35:18 19 Q So does that signify that for this inspection you'd
09:35:20 20 actually gone and looked at the prescription files to
09:35:22 21 confirm that?

09:35:23 22 A Yes, yes.

09:35:24 23 Q Okay. Then on the next page, I think we've already
09:35:39 24 talked about this, but I just wanted to confirm, what are
09:35:42 25 you describing there?

09:35:42 1 **A** Yes. I would have asked the pharmacists if they have
09:35:47 2 access to OARRS and then asked them to show me how they can
09:35:50 3 access it.

09:35:52 4 And in this case I typed in there that the pharmacists
09:35:56 5 demonstrated the ability to access it, so he or she must
09:35:59 6 have typed in their login information and accessed the
09:36:02 7 system.

09:36:02 8 **Q** And based on this report that we've been looking at,
09:36:07 9 following this inspection did you reach any conclusions as
09:36:10 10 to whether this pharmacy was complying with the laws of
09:36:12 11 Ohio?

09:36:14 12 **A** Yes, other than the pharmacist not having her ID card.
09:36:17 13 That was the only issue that was noted.

09:36:20 14 **Q** And do you recall any inspections of a Walgreens
09:36:23 15 pharmacy that you conducted where you determined that the
09:36:25 16 pharmacy was not operating lawfully?

09:36:27 17 **A** I'm not sure what you mean by lawfully. Like, were
09:36:32 18 there issues that we had to pink sheet them or issue a
09:36:35 19 written warning? Yes.

09:36:37 20 **Q** Okay.

09:36:37 21 **A** I don't recall off the top of my head which stores or
09:36:41 22 where, or anything like that.

09:36:42 23 **Q** Okay. But anywhere where the resolution of those pink
09:36:47 24 sheets wasn't resolved to your satisfaction?

09:36:50 25 **A** No, no.

09:36:51 1 Q And to the best of your knowledge, were Walgreens
09:36:53 2 pharmacies that you inspected operating lawfully at all
09:36:56 3 times?

09:36:56 4 A To the best of my knowledge.

09:36:58 5 Q Okay.

09:37:00 6 MR. SWANSON: I appreciate you answering my
09:37:01 7 questions. Thank you very much, sir.

09:37:03 8 THE WITNESS: Sure. No problem.

09:37:05 9 MR. SWANSON: I think some of my colleagues
09:37:06 10 have some questions for you as well.

09:37:08 11 THE COURT: Okay.

09:37:29 12 - - - - -

09:37:29 13 CROSS-EXAMINATION

09:37:29 14 BY MR. DELINSKY:

09:37:30 15 Q Good morning, Agent Edwards.

09:37:32 16 A Good morning.

09:37:33 17 MR. DELINSKY: Good morning everyone.

09:37:34 18 Q Thank you for answering our cautions, and our
09:37:36 19 apologies for having to take up time yesterday and this
09:37:41 20 morning.

09:37:41 21 A No worries.

09:37:43 22 Q Mr. Edwards, my name is Eric Delinsky. We shook hands
09:37:46 23 in the hallway.

09:37:47 24 A Mm-hmm.

09:37:47 25 Q I represent CVS in this case.

09:37:50 1 **A** Mm-hmm.

09:37:51 2 **Q** I'd like to begin -- and I don't have many questions.

09:37:54 3 I just want to ask about three subjects, okay?

09:37:56 4 **A** Okay.

09:37:56 5 **Q** But I would like to begin by asking you a little more
09:38:02 6 about OARRS.

09:38:04 7 **A** Mm-hmm.

09:38:04 8 **Q** The OARRS database is run by the Ohio Board of
09:38:10 9 Pharmacy, correct?

09:38:11 10 **A** Correct, yes.

09:38:11 11 **Q** And who provides the data that's populated in the
09:38:17 12 OARRS database?

09:38:18 13 **A** The prescribers -- well, the prescribers and the
09:38:23 14 wholesalers, those who are dispensing, personally furnishing
09:38:31 15 medication. So the people giving out the medication and
09:38:33 16 obtaining the medication.

09:38:34 17 **Q** Okay. So by way of example, since a CVS and a
09:38:39 18 Walgreens and a Walmart are filling prescriptions, they are
09:38:45 19 providing information that goes into the OARRS database,
09:38:48 20 correct?

09:38:48 21 **A** Yes, yes.

09:38:49 22 **Q** And the information they're providing includes the
09:38:54 23 date of the fill, correct?

09:38:55 24 **A** Yes.

09:38:56 25 **Q** The drug?

09:38:58 1 **A** Yes.

09:38:58 2 **Q** The number of pills?

09:39:00 3 **A** Yes.

09:39:00 4 **Q** The days supply?

09:39:04 5 **A** Yes.

09:39:04 6 **Q** All the information that OARRS requires and the Board
09:39:11 7 of Pharmacy requires about that prescription?

09:39:13 8 **A** Correct.

09:39:13 9 **Q** And I think this has changed over time, but when the
09:39:19 10 pharmacies have provided this information to the Board of
09:39:23 11 Pharmacy, to OARRS, is it daily, weekly?

09:39:27 12 **A** You're correct, it has changed over time. I believe
09:39:32 13 it's daily, within 24 hours, I believe, is what it is now.

09:39:37 14 **Q** So the Ohio Board of Pharmacy has close to realtime
09:39:43 15 access to all the prescriptions that are being filled by any
09:39:46 16 pharmacy in the state of Ohio?

09:39:49 17 **A** Correct, controlled substances.

09:39:50 18 **Q** Okay. Eric Garner -- wait, let me just stop there,
09:39:56 19 because that's an important point.

09:39:57 20 OARRS is only collecting information on controlled
09:40:00 21 substances?

09:40:00 22 **A** And gabapentin, so --

09:40:03 23 **Q** Do controlled substances include what we've learned in
09:40:05 24 this case are Schedule II prescription opioid medications?

09:40:10 25 **A** Yes, yes.

09:40:11 1 Q Okay. All right. Let's stay on OARRS but shift
09:40:14 2 course a little bit.

09:40:15 3 Who is Eric -- well, do you know Eric Garner?

09:40:19 4 A Eric?

09:40:22 5 Q Garner.

09:40:22 6 A Garner? Yes.

09:40:23 7 Q Who is Eric Garner?

09:40:24 8 A You mean Chad Garner?

09:40:26 9 Q Chad Garner. I'm Eric. He's Chad. Sorry.

09:40:29 10 A Yes.

09:40:29 11 Q Thank you.

09:40:32 12 Who is Chad Garner?

09:40:33 13 A Chad Garner is the director of OARRS.

09:40:36 14 Q Okay. And does Chad Garner write algorithms that the
09:40:44 15 Board of Pharmacy -- and computer code that the Board of
09:40:46 16 Pharmacy can use to analyze the data that comes in from the
09:40:50 17 pharmacists?

09:40:50 18 A I believe so. He does a lot of things that none of us
09:40:54 19 understand with the computer, so I believe that is one of
09:40:58 20 his roles.

09:41:01 21 Q Okay. Does the Board of Pharmacy generate reports
09:41:03 22 from the OARRS data?

09:41:03 23 A Yes.

09:41:04 24 Q Okay. Is the 640 report one of those reports?

09:41:11 25 A Yes.

09:41:11 1 Q What is the 640 report?

09:41:13 2 A That's a, as you say, an algorithm that he came up
09:41:16 3 with that lists doctors who are prescribers who I think it's
09:41:23 4 are seeing 640 patients in a month, I believe is how that
09:41:27 5 640 number came up. Yeah.

09:41:32 6 Q And am I right, it is called the 640 report?

09:41:36 7 A Yes.

09:41:41 8 Q And am I also right that the 640 report is for the
09:41:44 9 Board of Pharmacy's use, correct?

09:41:46 10 A Yes. It's for internal use, yes.

09:41:48 11 Q Is the 640 report shared with a CVS, a Walgreens, or a
09:41:54 12 Walmart?

09:41:54 13 A I do not believe so.

09:41:56 14 Q Okay. Does the Board of Pharmacy and Mr. Garner or
09:42:04 15 people he supervises prepare a doctor shopper report?

09:42:14 16 A Yes.

09:42:14 17 Q And do you recall what the doctor shopper report
09:42:17 18 shows?

09:42:17 19 A Yes. In fact, that's my role now with the Early
09:42:19 20 Intervention program, that's primarily what I use to
09:42:24 21 generate my cases. Again, it's also like the other report
09:42:27 22 has evolved over time. It started by identifying folks who
09:42:33 23 have been to five prescribers and five pharmacies within
09:42:37 24 three months, and that list has then -- we've changed the
09:42:44 25 algorithm, you know, to kind of lessen the list, because we

09:42:49 1 were getting into the, you know, thousands of names on
09:42:53 2 there. And the number of cases we generate per month in my
09:42:56 3 current role is in the single digits, you know.

09:43:02 4 So we mess -- not mess with, tweaked that report to
09:43:11 5 try to identify doctor shoppers, so --

09:43:17 6 **Q** Is that report, is the doctor shopper report like the
09:43:20 7 640 report, insofar as it's for the Board of Pharmacy's
09:43:25 8 internal purposes?

09:43:26 9 **A** Yes, yes.

09:43:26 10 **Q** The doctor shopper report is not shared with
09:43:29 11 pharmacies like CVS, Walgreens, and Walmart?

09:43:31 12 **A** Yes, right, correct.

09:43:33 13 Those are recent reports too. That's worth
09:43:36 14 mentioning. It's only the last few years that we've been
09:43:39 15 using those.

09:43:39 16 **Q** Is the Board of Pharmacy capable of running other
09:43:41 17 reports with the OARRS data?

09:43:42 18 **A** Yeah.

09:43:44 19 **Q** It could -- could the Board of Pharmacy run reports on
09:43:48 20 particular pharmacies to identify the volume of their --

09:43:52 21 **A** Yes, they could run it on a DEA number. Each pharmacy
09:43:56 22 has their own DEA number, prescribers have their own DEA
09:43:59 23 number. So they could run it based on an individual DEA
09:44:03 24 number.

09:44:04 25 **Q** And that's done, correct?

09:44:04 1 **A** Mm-hmm.

09:44:05 2 **Q** I'm sorry, we need the "yes" answer.

09:44:08 3 **A** I'm sorry. Yes.

09:44:09 4 **Q** You talk like I do.

09:44:11 5 Am I right that you and other agents of the Board of
09:44:21 6 Pharmacy have obtained investigative leads from these
09:44:26 7 analytic reports that the Board of Pharmacy runs internally?

09:44:30 8 **A** Yes.

09:44:30 9 **Q** One last set of OARRS questions before we move on.

09:44:37 10 **A** Sure.

09:44:41 11 **Q** Today, as we sit here today, the Board of Pharmacy
09:44:46 12 requires pharmacists to run OARRS in certain delineated
09:44:50 13 circumstances.

09:44:51 14 **A** Correct.

09:44:51 15 **Q** Okay. Am I right that a pharmacist doesn't -- isn't
09:44:57 16 obligated by the Board of Pharmacy to run an OARRS report
09:45:04 17 for every controlled substance prescription, it's only in
09:45:07 18 the circumstances that the Board of Pharmacy has delineated?

09:45:10 19 **A** I would say it's not required but encouraged.

09:45:12 20 **Q** Okay. With regard to these required OARRS reports,
09:45:21 21 when a pharmacist is now required, do you recall when the
09:45:26 22 Board of Pharmacy first required pharmacists to run OARRS
09:45:34 23 reports, at least in certain circumstances?

09:45:35 24 **A** I don't recall the exact date.

09:45:38 25 **Q** Year?

09:45:40 1 **A** '16 maybe? It might have been prescribers, when
09:45:45 2 prescribers were first required to.

09:45:46 3 **Q** I'm thinking 2011.

09:45:48 4 **A** 2011, when pharmacists -- pharmacists were required
09:45:51 5 prior to physicians.

09:45:52 6 **Q** Okay. So sometime between 2011 and 2016 maybe?

09:45:58 7 **A** Yes.

09:45:58 8 **Q** And again, that requirement from the Board of Pharmacy
09:46:02 9 was in the delineated circumstances?

09:46:04 10 **A** Correct.

09:46:05 11 **Q** Okay. All right. Let's turn to -- back to your
09:46:15 12 inspections. I think it should come as no surprise, I may
09:46:20 13 ask you about CVS.

09:46:21 14 **A** Sure.

09:46:21 15 **Q** But before I get there, when you conduct an inspection
09:46:28 16 of a pharmacy, and I'm very mindful that it's more episodic
09:46:32 17 now versus three years ago, but when you conducted an
09:46:35 18 inspection as an agent for the Board of Pharmacy, am I right
09:46:39 19 that the purpose is to look for problems?

09:46:42 20 **A** Yes. To protect the public essentially. It's the
09:46:45 21 ultimate goal.

09:46:46 22 **Q** It's less important that you see if a pharmacy's doing
09:46:49 23 awesome, it's more important that you see if it's not doing
09:46:52 24 awesome?

09:46:52 25 **A** I would say they're both important. I wouldn't say

09:46:55 1 one is more important or less important, but it's -- I mean,
09:47:00 2 our purpose is to go in there and make sure they're doing
09:47:03 3 things correctly.

09:47:04 4 **Q** Okay. Now let's focus on CVS.

09:47:09 5 I think you've already testified that you inspected
09:47:12 6 all the CVS pharmacies in Lake County, to the best of your
09:47:14 7 knowledge?

09:47:14 8 **A** Yes.

09:47:14 9 **Q** And to the best of your recollection, were all -- were
09:47:20 10 the -- were all of your inspections of CVS pharmacies in
09:47:24 11 Lake County generally favorable and positive?

09:47:27 12 **A** To my recollection, I don't recall any major issues
09:47:33 13 that stick out in my head.

09:47:34 14 **Q** And let's just be clear. I go back to my kids'
09:47:39 15 kindergarten classroom, where there was a big sign that says
09:47:43 16 We love mistakes. We don't like mistakes in pharmacies, but
09:47:46 17 that that's not to say there wasn't a pink sheet now and
09:47:50 18 then for a CVS pharmacy, correct?

09:47:52 19 **A** Correct.

09:47:52 20 **Q** And it's not to say you didn't identify issues now and
09:47:55 21 then, correct?

09:47:56 22 **A** Correct.

09:47:57 23 **Q** But generally they were favorable inspection reports?

09:48:00 24 **A** Correct.

09:48:00 25 **Q** Okay. And do you recall with regard to issues you may

09:48:05 1 have identified, do you recall any instance when you
09:48:08 2 identified an issue during an inspection of a CVS pharmacy
09:48:12 3 in Lake County when CVS didn't resolve that issue to your
09:48:20 4 satisfaction?

09:48:20 5 **A** Not that I recall.

09:48:21 6 **Q** Okay. Fair enough. And I understand it's going
09:48:24 7 back --

09:48:25 8 **A** Yes.

09:48:25 9 **Q** -- some way.

09:48:30 10 I of course left the document I wanted to use at the
09:48:34 11 table, but I have it.

09:48:39 12 I want to show you an inspection report.

09:48:45 13 MR. DELINSKY: Mr. Pitts, may I have the ELMO?

09:48:52 14 **Q** Agent Edwards, do you recognize this to be an
09:48:57 15 inspection report of the CVS pharmacy on Mentor Avenue in
09:49:03 16 Mentor?

09:49:03 17 **A** Yes.

09:49:04 18 **Q** Okay. And the date of this report is August 31, 2016?

09:49:10 19 **A** Yes.

09:49:11 20 **Q** Okay. Let's turn the page.

09:49:14 21 And you have a copy. Good. You're looking at your
09:49:18 22 hard copy?

09:49:19 23 **A** Yes, yeah.

09:49:19 24 **Q** And I want to look at page 3 first.

09:49:23 25 It says, "Completed by," and I believe this is your

09:49:25 1 name, "William Trey Edwards." Correct?

09:49:28 2 **A** Yes.

09:49:29 3 **Q** Okay. And this is an inspection report -- make sure
09:49:33 4 you take a look at it -- that you prepared?

09:49:35 5 **A** That I what?

09:49:36 6 **Q** That you prepared?

09:49:36 7 **A** Yes.

09:49:37 8 **Q** And it reflects an inspection of the CVS in Mentor
09:49:39 9 that you conducted?

09:49:40 10 **A** Correct.

09:49:40 11 **Q** And as far as you can tell, this is a true and
09:49:45 12 accurate copy of your inspection report?

09:49:47 13 **A** Yes.

09:49:47 14 **Q** Okay. I want to walk through this quickly, but before
09:49:51 15 I do, I don't want to skip over page 2.

09:49:53 16 Am I right, that in the course of this inspection you
09:50:00 17 identified certain issues?

09:50:02 18 **A** Yes.

09:50:02 19 **Q** And you wanted to bring those to the attention of the
09:50:05 20 CVS pharmacists in the pharmacy?

09:50:06 21 **A** Correct.

09:50:07 22 **Q** And on page 2, these are the issues you identified,
09:50:12 23 correct?

09:50:12 24 **A** Correct.

09:50:13 25 **Q** Okay. And just to go through them, a change in the

09:50:19 1 pharmacy's responsible person had not been properly reported
09:50:24 2 to the Board of Pharmacy, correct?

09:50:24 3 **A** Correct.

09:50:25 4 **Q** Okay. And can you just explain, give us a thumbnail
09:50:30 5 sketch of what that means?

09:50:31 6 **A** That means -- the responsible person is the manager of
09:50:33 7 the pharmacy, and the pharmacies are required to notify us I
09:50:37 8 believe within 30 days that there has been a change. And in
09:50:41 9 this case, apparently they didn't; either they didn't notify
09:50:44 10 us or they didn't properly change managers.

09:50:49 11 **Q** Correct. Okay. So it was sort of a paperwork issue,
09:50:54 12 so to speak?

09:50:54 13 **A** Could have been, or they just hadn't appointed a new
09:50:59 14 manager yet.

09:51:00 15 **Q** Okay. And we'll get into that.

09:51:02 16 Then you identified some of these other issues that
09:51:06 17 we'll see in your report, correct?

09:51:08 18 **A** Yes.

09:51:08 19 **Q** Okay. And that's sort of what you talked about
09:51:11 20 before, but you don't recall an instance when CVS did not
09:51:13 21 resolve any of the issues you identified?

09:51:15 22 **A** Correct.

09:51:15 23 **Q** Okay. All right. Now, I want to go to the report a
09:51:21 24 little bit. And I just want to point out one thing for the
09:51:26 25 ladies and gentlemen of the jury.

09:51:28 1 I've put this yellow sticky here, and I'm just going
09:51:32 2 to explain why. When you lift it up, there's personal
09:51:35 3 information associated with the pharmacists who are listed
09:51:38 4 there. I just didn't want to break any rules regarding
09:51:41 5 that.

09:51:42 6 But am I right, that where I had -- whoops, I'm
09:51:47 7 already doing it.

09:51:51 8 That where my yellow sticky is, to the left it lists
09:51:55 9 the pharmacists who worked in this particular pharmacy at
09:51:57 10 the time, correct?

09:51:57 11 **A** Correct.

09:51:58 12 **Q** Okay. All right. We're now on page 4. You've
09:52:05 13 answered some of these questions in response to Mr. Swanson,
09:52:10 14 so we can go quick.

09:52:12 15 I'm highlighting "Basic questions pertaining to the
09:52:19 16 ARKS."

09:52:20 17 ARKS is sort of an abbreviation for computer system,
09:52:22 18 right?

09:52:23 19 **A** Right.

09:52:23 20 **Q** Okay. And was CVS's computer system approved by the
09:52:26 21 Ohio Board of Pharmacy?

09:52:27 22 **A** Yes.

09:52:29 23 **Q** And by computer system, I mean its computer
09:52:33 24 dispensing.

09:52:33 25 **A** Dispensing software, yes.

09:52:35 1 Q Okay. Let's go to the next page. I just want to ask
09:52:45 2 you about a few things.

09:52:46 3 There's a question, "Is the shared ARKS a realtime
09:52:50 4 online system and used for the review and transfer of
09:52:53 5 dispensing data?"

09:52:54 6 Your answer is yes. What does that mean?

09:52:56 7 A That means that it's realtime and shared in the sense
09:52:59 8 that other CVS pharmacies immediately see what someone
09:53:06 9 enters at the Mentor store, someone at Willoughby would see
09:53:10 10 that in realtime.

09:53:14 11 Q That's a good thing?

09:53:15 12 A That's a good thing, yes.

09:53:16 13 Q Let's go down a little bit, and I'm skipping through
09:53:18 14 this just in the interest of time.

09:53:20 15 "ARKS record accuracy. Are required records of
09:53:27 16 accountability being kept complete and accurate in the
09:53:32 17 ARKS." Answer, yes.

09:53:32 18 Do you see that?

09:53:33 19 A Yes.

09:53:33 20 Q Could you explain that?

09:53:36 21 A That just means that the prescriptions that they're
09:53:38 22 getting into the pharmacy are being properly documented in
09:53:41 23 the computer system.

09:53:42 24 Q And those are the records of accountability?

09:53:44 25 A Correct.

09:53:44 1 Q Okay. All right. Let me ask you another one. We
09:53:59 2 have some minimum standards here. I'm just going to flag
09:54:01 3 one.

09:54:01 4 "Does the pharmacy have the proper equipment to
09:54:05 5 conduct the practice of pharmacy?"

09:54:07 6 Answer, yes.

09:54:08 7 A Yes.

09:54:08 8 Q Okay. And was that your finding --

09:54:09 9 A Yes.

09:54:10 10 Q -- in your inspection?

09:54:12 11 Okay.

09:54:23 12 I think you provided information in response to
09:54:25 13 Mr. Swanson, Number 11, improper dispensing, "Is there
09:54:31 14 evidence to indicate that a prescription has been dispensed
09:54:34 15 improperly?"

09:54:34 16 Answer, no.

09:54:37 17 A Correct.

09:54:37 18 Q Correct. That's the place that if you had found a
09:54:40 19 pharmacist had filled an illegitimate prescription, you
09:54:44 20 would have noted it there?

09:54:45 21 A Yes, or if they had had an error.

09:54:47 22 Q Correct. And in candor, I've looked at a report where
09:54:52 23 a CVS pharmacist gave 30 pills and was supposed to give 60.
09:54:56 24 That kind of thing would go here too, right?

09:54:58 25 A Yes.

09:54:58 1 Q So that's not always perfect; in this case it is?

09:55:00 2 A Yes.

09:55:01 3 Q Okay. Let's go down to the bottom of this page.

09:55:06 4 DUR software, can you briefly explain to the ladies
09:55:11 5 and gentlemen of the jury what that is?

09:55:11 6 A That's the software program that completes the drug
09:55:18 7 utilization review. So basically the steps that they go
09:55:20 8 through when filling a prescription to make sure that the
09:55:25 9 prescription is proper.

09:55:28 10 Q Okay. And then the question, "Does the pharmacist
09:55:34 11 rely solely on the dispensing software to perform the DUR
09:55:37 12 for prescription dispensing?"

09:55:39 13 And your answer is no.

09:55:42 14 That's the right answer, right?

09:55:45 15 A Correct.

09:55:45 16 Q Can you explain why?

09:55:46 17 A Well, if they -- they may take other steps. The
09:55:53 18 dispensing software may identify an issue, such as an
09:55:57 19 overlap or too soon, or something like that, so then they
09:56:01 20 may on their own, as part of this drug utilization review,
09:56:06 21 go in and look at the patient profile or call the physician,
09:56:09 22 or ask the patient, Hey, what's going on, I see you got your
09:56:13 23 medication switched. What's going on here?

09:56:16 24 Q And is the idea that a pharmacist has to exercise her
09:56:21 25 or his judgment and can't just rely on a computer output

09:56:27 1 alone?

09:56:27 2 **A** Correct.

09:56:28 3 **Q** I just want to go through a few more questions.

09:56:39 4 "Errors in dispensing," do you see that on the next
09:56:42 5 page?

09:56:42 6 **A** Mm-hmm.

09:56:42 7 **Q** None were identified in this report, but I want to ask
09:56:45 8 you about one question.

09:56:49 9 "Have the frequency of errors caused a standard of
09:56:52 10 practice issue for the pharmacy with a pharmacist or the
09:56:55 11 pharmacy as a whole?"

09:56:57 12 Do you see that question?

09:56:57 13 **A** Yes.

09:56:58 14 **Q** And your answer is no, right?

09:57:00 15 **A** Correct.

09:57:00 16 **Q** And again, "no" here is the correct answer, the answer
09:57:03 17 you want to see?

09:57:04 18 **A** Right.

09:57:04 19 **Q** And can you explain why?

09:57:05 20 **A** Well, because the frequency of errors, you know, if
09:57:11 21 you get reports of multiple errors at a pharmacy, you may
09:57:16 22 have a bigger issue. You may have an impaired pharmacist,
09:57:19 23 you may have a pharmacist who is, you know, past the age
09:57:25 24 where they can work; you know, issues like that that may
09:57:28 25 cause you to be concerned and causing errors to be made. So

09:57:32 1 that's the reason for that question.

09:57:33 2 **Q** So that's sort of a caution, saying are there any
09:57:36 3 systemic errors in the pharmacy?

09:57:38 4 **A** Yes, right.

09:57:39 5 **Q** And here you're concluding no?

09:57:41 6 **A** Correct.

09:57:41 7 **Q** Okay. Let me keep going through this, with an
09:57:48 8 interest in time.

09:57:48 9 I'm looking at page 11, okay? And you've already
09:57:51 10 testified about this caution.

09:57:55 11 **A** Yes.

09:57:56 12 **Q** Okay. This is about OARRS.

09:57:57 13 "Are the pharmacists requesting OARRS reports when
09:58:01 14 appropriate?"

09:58:02 15 And what's your answer there?

09:58:04 16 **A** Yes.

09:58:04 17 **Q** What does that mean?

09:58:05 18 **A** That means they're requesting them when they should be
09:58:07 19 requesting them, based on what I saw that day.

09:58:09 20 **Q** Okay. And there was just one other thing, just give
09:58:18 21 me a handle. I want to go to the -- remember we talked
09:58:25 22 about the responsible person?

09:58:27 23 **A** Mm-hmm.

09:58:27 24 **Q** Okay. This is one of the imperfections in this
09:58:33 25 report, and there's a few. I'm just going to focus on this

09:58:36 1 one.

09:58:39 2 So I'm looking at page 4, okay? It's up on the
09:58:43 3 screen.

09:58:43 4 **A** Yes.

09:58:43 5 **Q** "Have changes in the pharmacy's responsible person
09:58:49 6 been properly reported to the Board of Pharmacy. Written
09:58:52 7 response required."

09:58:53 8 And you say no.

09:58:56 9 That's the problem, right?

09:58:57 10 **A** Yes.

09:58:57 11 **Q** And does your explanation refresh your recollection on
09:59:01 12 what happened here?

09:59:01 13 **A** Yes. I can see here that the pharmacist had been
09:59:04 14 acting as the responsible person but had not reported to our
09:59:08 15 agency that she was the responsible person. So as far as we
09:59:14 16 knew, in our system it showed someone else being the
09:59:17 17 responsible person.

09:59:18 18 **Q** So somebody was there in the role, just hadn't
09:59:22 19 reported it to the Ohio Board of Pharmacy?

09:59:25 20 **A** Yes, correct.

09:59:25 21 **Q** Problem; not the end of the world?

09:59:27 22 **A** Correct.

09:59:29 23 THE COURT: Mr. Delinsky, I don't know if you
09:59:30 24 plan to offer this document, but I noticed it does not have
09:59:36 25 a five-digit number on the front.

09:59:38 1 MR. DELINSKY: You're talking about -- thank
09:59:40 2 you very much, Your Honor. That's a really good point. It
09:59:43 3 does, but for some reason -- do you see it there, Judge?
09:59:47 4 You can barely read it.

09:59:50 5 THE COURT: Up in the right -- I've got to
09:59:54 6 take my glasses off to read it.

09:59:56 7 All right. It looks like it's 03795.

10:00:00 8 MR. DELINSKY: That's correct.

10:00:02 9 THE COURT: Okay.

10:00:03 10 MR. DELINSKY: And thank you, Your Honor, for
10:00:05 11 reminding me. I can't do it with or without my glasses. So
10:00:09 12 thank you.

10:00:09 13 THE COURT: Okay. You're welcome.

10:00:20 14 BY MR. DELINSKY:

10:00:21 15 **Q** All right. One last chapter here, Mr. Edwards. I'm
10:00:23 16 showing you a document. You have it.

10:00:25 17 This goes back to your time at Lake County Narcotics
10:00:29 18 Agency. And that's -- you were an officer there.

10:00:31 19 Is it officer or detective?

10:00:34 20 **A** Agent.

10:00:34 21 **Q** Agent. Okay, agent throughout your career.

10:00:38 22 In the '05 time frame, correct?

10:00:46 23 **A** Correct.

10:00:46 24 **Q** What I'm going to show you, and it's at the bottom,
10:00:49 25 it's DEF-MDL-12782, is a document about a seminar that Lake

10:00:58 1 County Narcotics was sponsoring, correct?

10:01:00 2 **A** Yeah, it was a continuing education for pharmacists.

10:01:02 3 **Q** For pharmacists, okay.

10:01:09 4 And you were involved in putting this together,

10:01:11 5 correct?

10:01:11 6 **A** Correct.

10:01:11 7 **Q** And you can see at the bottom that the RSVP is

10:01:15 8 supposed to go to you, correct?

10:01:17 9 **A** Yup.

10:01:17 10 **Q** Okay. And it also says "The seminars are open to

10:01:22 11 anyone who practices in the state of Ohio."

10:01:24 12 See that?

10:01:24 13 **A** Correct.

10:01:25 14 **Q** Okay. Could that be doctors as well as pharmacists?

10:01:27 15 **A** No, it was geared towards pharmacists.

10:01:29 16 **Q** Okay. All right.

10:01:30 17 So I just want to point out some other things.

10:01:34 18 Lake County Narcotics invited an outside speaker to

10:01:39 19 this seminar, correct?

10:01:40 20 **A** Correct.

10:01:40 21 **Q** And that was an executive with Purdue Pharma, correct?

10:01:46 22 **A** Yes.

10:01:46 23 **Q** And that person's name was Ritch Wagner?

10:01:49 24 **A** Correct.

10:01:51 25 **Q** And why did Lake County Narcotics invite Mr. Wagner to

10:01:55 1 speak?

10:01:55 2 **A** I met Ritch Wagner at a National Association of Drug
10:02:02 3 Diversion Investigators conference, and he explained that he
10:02:05 4 was a law enforcement liaison for Purdue and they were
10:02:08 5 providing this training for free, and also, you know,
10:02:14 6 providing grants, and all kinds of things. And they were,
10:02:17 7 at that time, helping out law enforcement.

10:02:20 8 And so he came along with Joann Predina to conduct
10:02:24 9 this continuing education.

10:02:26 10 **Q** And in that regard, I think you included at the
10:02:29 11 bottom, "Purdue Pharma is an industry leader in prescription
10:02:34 12 drug abuse education and has joined forces with law
10:02:37 13 enforcement."

10:02:38 14 **A** Yes.

10:02:38 15 **Q** Okay. I'm going to ask you some final questions. I
10:02:44 16 think the answers are really obvious, okay, but just bear
10:02:47 17 with me.

10:02:50 18 By including a Purdue executive at this event, am I
10:02:55 19 right that neither you nor Lake County Narcotics were
10:02:59 20 collaborating with Purdue to spread misinformation?

10:03:02 21 **A** Correct.

10:03:05 22 **Q** Likewise, neither you nor Lake County Narcotics were
10:03:11 23 collaborating with Purdue in any of Purdue's own misconduct?

10:03:18 24 **A** No, correct.

10:03:19 25 **Q** And was the information -- I just want to make sure

10:03:22 1 that's clear, and I know it is.

10:03:23 2 "No," you agree with the supposition of the question?

10:03:25 3 **A** I agree with what you said, right.

10:03:28 4 **Q** You weren't collaborating with Purdue in any improper
10:03:31 5 ways?

10:03:32 6 **A** Right.

10:03:32 7 **Q** And was the information provided by Mr. Wagner, the
10:03:35 8 Purdue executive, appropriate in not misleading at this
10:03:40 9 event?

10:03:40 10 **A** That's my recollection.

10:03:42 11 MR. DELINSKY: Thank you very, very much for
10:03:45 12 your time, Mr. Edwards.

10:03:46 13 THE WITNESS: Yes, thank you.

10:03:52 14 THE COURT: Okay. Ms. Fumerton for Walmart.

10:03:56 15 MS. FUMERTON: Thank you, Your Honor. Just
10:03:59 16 give me one minute.

10:04:11 17 Your Honor, may I approach the bench and the witness?

10:04:15 18 THE COURT: Sure.

10:04:43 19 - - - - -

10:04:43 20 CROSS-EXAMINATION

10:04:44 21 BY MS. FUMERTON:

10:04:44 22 **Q** Good morning, Agent Edwards.

10:04:46 23 **A** Good morning.

10:04:46 24 **Q** My name is Tara Fumerton, and I'm one of the attorneys
10:04:51 25 for Walmart, and I have just a couple quick questions for

10:04:55 1 you.

10:04:55 2 **A** Sure.

10:04:56 3 **Q** To the best of your knowledge, were the inspections of
10:04:59 4 the Walmart pharmacies that you conducted generally
10:05:01 5 favorable?

10:05:01 6 **A** Yes.

10:05:02 7 **Q** And I just want to ask you a couple quick questions
10:05:05 8 about two of those inspections that you did.

10:05:07 9 **A** Okay.

10:05:07 10 **Q** If you turn to Tab 1 of the binder that I gave you.

10:05:10 11 **A** Yes.

10:05:11 12 MS. FUMERTON: And for the record, that is
10:05:12 13 WMT-MDL-01418.

10:05:20 14 And Your Honor, that's the first one I handed you. It
10:05:23 15 should be on the top of the stack.

10:05:24 16 And Mr. Lanier, it's the first one.

10:05:33 17 BY MS. FUMERTON:

10:05:33 18 **Q** And do you have that document in front of you, Agent
10:05:36 19 Edwards?

10:05:36 20 **A** Yes.

10:05:36 21 **Q** Do you recognize this document?

10:05:37 22 **A** Yes.

10:05:37 23 **Q** And can you generally just describe what it is?

10:05:42 24 **A** Yes. It's an inspection that was completed on January
10:05:45 25 31, 2011, at the Walmart in Madison, Ohio.

10:05:49 1 Q And that's Walmart Store 3608? You see that in the
10:05:52 2 top left-hand corner; is that right?

10:05:53 3 A Yes, correct.

10:05:54 4 Q And that's your signature down at the bottom next to
10:05:57 5 the date, January 31st, 2011?

10:05:59 6 A Yes.

10:05:59 7 Q I just have one question about this, and this is
10:06:01 8 specific to number 39 on the left-hand side, OARRS.

10:06:05 9 A Mm-hmm.

10:06:05 10 Q And if you actually turn the page, then, to the third
10:06:12 11 page of this document that ends in 85.

10:06:15 12 A Mm-hmm.

10:06:15 13 Q You'll see that there's a 39 that corresponds to that
10:06:25 14 number on the left-hand side?

10:06:26 15 A Yes.

10:06:26 16 Q And what did you conclude in your inspection about
10:06:31 17 Walmart's OARRS?

10:06:32 18 A I said "Walmart pharmacists now able to access OARRS,"
10:06:36 19 exclamation point.

10:06:38 20 Q And I think earlier you were talking about the early
10:06:39 21 days of OARRS, and Mr. Delinsky also asked you some
10:06:43 22 questions about when pharmacists were first required to
10:06:46 23 access OARRS in certain instances.

10:06:49 24 A Yes.

10:06:49 25 Q And I think you couldn't recall the exact date.

10:06:51 1 **A** Right.

10:06:51 2 **Q** The jury heard some testimony yesterday that that was
10:06:54 3 in October of 2011.

10:06:56 4 Do you have any reason to disagree with that?

10:06:57 5 **A** No.

10:06:57 6 **Q** And so at least you were concluding with this
10:07:02 7 inspection that Walmart pharmacists had access to OARRS
10:07:05 8 prior to that date, right?

10:07:07 9 **A** My recollection is that there were a number of
10:07:13 10 pharmacies who because of the way their internal computer
10:07:15 11 system worked, they couldn't access anything outside of
10:07:18 12 their own intranet. So, like, this is telling me that now
10:07:24 13 they were able to access OARRS.

10:07:26 14 They used to have to, in the old days, have to get on
10:07:29 15 their phone, you know, and access -- or go, you know,
10:07:33 16 somewhere else to access OARRS on their own. So this is
10:07:37 17 telling me that they now had the ability to do it within the
10:07:40 18 dispensing software at Walmart.

10:07:41 19 **Q** And so that's at least by January of 2011, correct?

10:07:44 20 **A** Correct, yes.

10:07:46 21 **Q** Okay. If you can turn to Tab 4.

10:07:52 22 MS. FUMERTON: And for the record, this is
10:07:54 23 WMT-MDL-01387.

10:08:00 24 So, Your Honor, it should be the second document that
10:08:02 25 I handed to you.

10:08:02 1 **A** Yes.

10:08:03 2 **Q** Agent Edwards, are you there?

10:08:05 3 **A** Yes.

10:08:06 4 **Q** Do you recognize this document?

10:08:06 5 **A** Yes. This is an inspection I conducted at the Walmart
10:08:09 6 Store 1863 in Eastlake on October 8, 2013.

10:08:14 7 **Q** And that's your signature again down at the bottom
10:08:17 8 left-hand corner?

10:08:17 9 **A** Yes.

10:08:18 10 **Q** And for this one I just want to ask you about number
10:08:25 11 3, the records system?

10:08:26 12 **A** Yes.

10:08:26 13 **Q** And so I think that is described on the first page
10:08:31 14 carrying over to the second page, but if we could just
10:08:34 15 highlight that, maybe make it a little bit bigger.

10:08:36 16 Could you just read for us what you concluded about
10:08:39 17 Walmart's record system at that time?

10:08:40 18 **A** Yes.

10:08:41 19 "Connexus software version 5.1.1. Six terminals
10:08:47 20 handle data entry and patient profile searches. Dispensing
10:08:51 21 software connected to all other Walmart locations. Data
10:08:54 22 backed up at corporate headquarters. Pharmacists complete a
10:08:58 23 four-point check for all new prescriptions: Patient name,
10:09:02 24 drug and strength, SIG, and prescriber DEA on controls.
10:09:07 25 Visual verify checked on all prescriptions, new and refill.

10:09:12 1 Four-point check and visual verify reports print daily and
10:09:16 2 are signed by the pharmacist. DUR warnings must be resolved
10:09:18 3 by the pharmacist. Most severe warnings require the
10:09:21 4 pharmacists to document how the issue was resolved."

10:09:24 5 **Q** And so what was your overall conclusion about
10:09:26 6 Walmart's record system at that time?

10:09:27 7 **A** That it was compliant with our requirements.

10:09:35 8 **Q** And with respect to the two inspections that we just
10:09:37 9 looked at, what was your overall conclusion with those? Did
10:09:42 10 Walmart comply with the regulations and laws of the Ohio
10:09:45 11 Board of Pharmacy?

10:09:45 12 **A** Yes.

10:09:48 13 MS. FUMERTON: Thank you, Agent Edwards. I
10:09:50 14 don't have any further questions.

10:09:52 15 THE WITNESS: Thank you.

10:09:54 16 THE COURT: Okay. Mr. Weinberger.

10:10:41 17 - - - - -

10:10:41 18 CROSS-EXAMINATION

10:10:41 19 BY MR. WEINBERGER:

10:10:43 20 **Q** Agent Edwards, good morning.

10:10:46 21 **A** Good morning.

10:10:46 22 **Q** Feels like afternoon at this point. I do have some
10:10:48 23 questions. My time is limited. I'm going to try to get
10:10:52 24 through them as rapidly as possible.

10:10:54 25 **A** Okay.

10:10:54 1 Q My name is Peter Weinberger, and I'm privileged to
10:10:58 2 represent the plaintiffs in this case, Lake and Trumbull
10:11:01 3 County.

10:11:01 4 A Okay.

10:11:01 5 Q We have not met before, have we?

10:11:03 6 A No.

10:11:03 7 Q I heard somewhere that you have a pharmacist in the
10:11:11 8 family. Is that true?

10:11:12 9 A I do, yes.

10:11:12 10 Q And who is that?

10:11:13 11 A My wife.

10:11:14 12 Q And how long has she been a pharmacist?

10:11:16 13 A Since 2000.

10:11:18 14 Q And where does she work?

10:11:20 15 A For Giant Eagle.

10:11:22 16 Q And has she always worked for Giant Eagle?

10:11:24 17 A No, she worked for Hillcrest Hospital initially and
10:11:30 18 then very briefly for Rite Aid, but she's been with Giant
10:11:33 19 Eagle since 2000.

10:11:36 20 Q And do you and she socialize with other pharmacists?

10:11:45 21 A Occasionally, yes.

10:11:47 22 Q Any pharmacists from Walgreens?

10:11:49 23 A Well, define "socialize." I mean, I have a neighbor
10:11:57 24 who is a Walgreens pharmacist, so I guess yes.

10:12:02 25 Q Okay. I mean, I'm not implying anything in particular

10:12:06 1 other than whether or not within your social circle, because
10:12:10 2 your wife's a pharmacist, that you have friends or
10:12:14 3 acquaintances.

10:12:15 4 **A** Yes.

10:12:15 5 **Q** You do, right?

10:12:16 6 **A** Yes, yes.

10:12:17 7 **Q** So I have --

10:12:21 8 MR. WEINBERGER: Can you turn on the Wolfe,
10:12:22 9 please?

10:12:24 10 **Q** I have -- that's a -- it's like a picture of you with
10:12:30 11 more of a beard than you have now.

10:12:32 12 **A** Yeah.

10:12:35 13 **Q** But that is you, right?

10:12:36 14 **A** That is me.

10:12:37 15 **Q** All right. So what we're going to -- what we're going
10:12:39 16 to cover with you real quickly today is --

10:12:41 17 **A** Is that from the deposition?

10:12:42 18 **Q** Huh?

10:12:43 19 **A** Is that my picture from the deposition?

10:12:45 20 **Q** I think we pulled it up somewhere else. I'm not sure.
10:12:52 21 Next time you have to testify, we'll get you a better photo.
10:12:55 22 How is that?

10:12:56 23 **A** Okay. I appreciate that.

10:12:57 24 **Q** So here's what we're going to cover with you in the
10:12:59 25 next few minutes. We're going to cover with you a 2014

10:13:04 1 presentation that you made on behalf of the Ohio Board of
10:13:07 2 Pharmacy.

10:13:07 3 **A** Okay.

10:13:07 4 **Q** We're going to cover your inspections.

10:13:10 5 **A** Okay.

10:13:10 6 **Q** And we're going to cover some investigations.

10:13:12 7 **A** Okay.

10:13:13 8 **Q** All right?

10:13:13 9 **A** Yup.

10:13:14 10 **Q** So let's start, first of all, with a little bit of
10:13:21 11 your training.

10:13:22 12 You were trained -- is it true that you were trained
10:13:24 13 by Mr. Pavlich on the job?

10:13:27 14 **A** Yes.

10:13:27 15 **Q** And you mentioned that you've had contact with various
10:13:39 16 pharmacists and that your contact with them and
10:13:42 17 communications was always very cooperative.

10:13:43 18 Would it be fair to say that most of the time that
10:13:46 19 contact resulted because you were investigating a patient or
10:13:53 20 you were investigating a particular diverter or person you
10:13:58 21 thought was diverting, and so you were going to the
10:14:02 22 pharmacies to ask for records?

10:14:04 23 **A** Or maybe just there on a routine basis, but yes, and
10:14:08 24 for routine reasons as well.

10:14:10 25 **Q** So when you -- and you're, like, part of law

10:14:15 1 enforcement, right?

10:14:15 2 **A** Correct.

10:14:16 3 **Q** So you as a member of -- or an agent for the Ohio
10:14:19 4 Board of Pharmacy goes to a pharmacy, one of the retail
10:14:24 5 pharmacy chains, and talks with a pharmacist; one would
10:14:27 6 expect, since you are law enforcement, that you would get
10:14:31 7 cooperation from the pharmacists.

10:14:33 8 **A** Correct.

10:14:33 9 **Q** Right?

10:14:34 10 **A** Right.

10:14:34 11 **Q** Nothing unusual about that, right?

10:14:36 12 **A** Right.

10:14:36 13 **Q** All right. So in 2014 --

10:14:49 14 MR. WEINBERGER: And if you could give the
10:14:50 15 witness P-20809.

10:14:56 16 **Q** I'm just going to put up the first page, and we'll get
10:14:59 17 you the entire PowerPoint exhibit.

10:15:11 18 This is our first stop. And this is a presentation
10:15:14 19 that you made, according to the first page of the exhibit,
10:15:21 20 this is an e-mail from a Mary Dillon to you that references
10:15:39 21 a presentation in 2014.

10:15:41 22 **A** Correct.

10:15:42 23 **Q** And so this first page of the PowerPoint reflects an
10:15:50 24 August 26, 2014, presentation that you made on behalf of the
10:15:58 25 Ohio State Board of Pharmacy, right?

10:15:59 1 **A** Correct.

10:15:59 2 **Q** And the purpose of this was to give a general overview
10:16:03 3 as of 2014 about OARRS, right?

10:16:06 4 **A** Correct.

10:16:06 5 **Q** And you compiled the information for this presentation
10:16:12 6 with I think other team members on the Ohio Board of
10:16:16 7 Pharmacy?

10:16:16 8 **A** Yes, yes.

10:16:17 9 **Q** And did you give this presentation more than once?

10:16:23 10 **A** I don't recall if it was more than once. I believe --
10:16:28 11 I recall one time in particular that we gave it down at the
10:16:34 12 BCI office in Richfield. And my recollection is that it was
10:16:41 13 so sparsely attended that we didn't give any more
10:16:45 14 presentations.

10:16:46 15 **Q** All right. So this has a little bit about you, right?

10:16:56 16 **A** Yes.

10:16:56 17 **Q** And then I was interested in the next page, which is
10:17:02 18 page 4 of this exhibit.

10:17:05 19 This is actually I think meant to refer to a video --

10:17:11 20 **A** Yes.

10:17:11 21 **Q** -- about red flags, right?

10:17:16 22 **A** Yes.

10:17:16 23 **Q** And that video is actually on the website of the Ohio
10:17:24 24 Board of Pharmacy, isn't it?

10:17:26 25 **A** I don't recall where that video came from or where it

10:17:28 1 was located.

10:17:28 2 Q Well, here's my question: If you go on the website of
10:17:33 3 the Ohio Board of Pharmacy -- I mean, I did that.

10:17:37 4 A Mm-hmm.

10:17:37 5 Q This video, there's a red flag video on the website.

10:17:41 6 A Okay.

10:17:42 7 Q Are you aware of that?

10:17:43 8 A I was not aware of that, no.

10:17:45 9 Q Okay. So that video was produced by the National
10:17:51 10 Association of Boards of Pharmacy, wasn't it?

10:17:53 11 MR. SWANSON: Objection, Your Honor. He said
10:17:54 12 he's not aware of it.

10:17:56 13 THE COURT: Well --

10:17:57 14 MR. SWANSON: And now it's just testifying.

10:17:59 15 THE COURT: He said he wasn't aware that the
10:18:00 16 video was on the website.

10:18:01 17 Why don't you ask him --

10:18:02 18 MR. WEINBERGER: I will, Your Honor.

10:18:03 19 THE COURT: -- if he knows who made this
10:18:07 20 video.

10:18:07 21 MR. WEINBERGER: Sure.

10:18:08 22 BY MR. WEINBERGER:

10:18:09 23 Q So you're familiar with the National Board -- National
10:18:13 24 Association of Boards of Pharmacy, right?

10:18:14 25 A Yes.

10:18:15 1 Q Have you attended any of their sessions?

10:18:19 2 A I have not.

10:18:20 3 Q Are you aware that Carmen Catizone was the executive
10:18:23 4 director of the National Association Of Boards of Pharmacy?

10:18:26 5 A That name rings a bell, but I couldn't tell you for
10:18:29 6 certain.

10:18:29 7 Q Are you aware of the fact that Carmen Catizone is a
10:18:33 8 well-known expert in pharmacy regulations and red flags?

10:18:41 9 MR. DELINSKY: Objection, Your Honor.

10:18:42 10 THE COURT: Overruled.

10:18:43 11 A I recognize the name, but I don't recognize why -- I
10:18:46 12 don't remember why I know the name.

10:18:48 13 Q Okay. Well, this particular video that you used in
10:18:50 14 your presentation of 2014, wasn't it a video that was
10:18:55 15 produced by the National Association of Boards of Pharmacy?

10:18:58 16 A I don't recall.

10:18:59 17 Q Did this video describe red flags?

10:19:03 18 A I don't recall the contents of the video, but based on
10:19:08 19 the title there, that is a good assumption.

10:19:10 20 Q Do you recall that it had some actors that were acting
10:19:16 21 as patients and pharmacists, and they went through various
10:19:19 22 vignettes about how one might identify red flags?

10:19:23 23 A That sounds vaguely familiar, but I do not recall the
10:19:25 24 video.

10:19:26 25 Q All right. So here's a description of your training

10:19:41 1 objectives, right?

10:19:41 2 **A** Mm-hmm.

10:19:41 3 **Q** And it is to go over the background, the scope of the
10:19:46 4 drug abuse problem, the Boards of Pharmacy's roles and
10:19:51 5 responsibilities, and then to discuss OARRS in general,
10:19:51 6 right?

10:19:51 7 **A** Yes.

10:19:53 8 **Q** And then in more specifics, right?

10:19:55 9 **A** Yes.

10:19:55 10 **Q** And then the very next slide defines drug diversion,
10:19:59 11 right?

10:20:01 12 **A** Yes.

10:20:01 13 **Q** And we've heard a lot about that in this case. Going
10:20:04 14 through it pretty quickly, it involves theft of drugs,
10:20:07 15 tampering with drugs, deception to obtain dangerous drugs,
10:20:11 16 and illegal processing of drug documents.

10:20:14 17 Correct?

10:20:15 18 **A** Correct.

10:20:15 19 **Q** Now, as part of this presentation -- by the way, you
10:20:25 20 were shown this document when you were -- when you gave your
10:20:32 21 deposition, right?

10:20:32 22 **A** Yes.

10:20:33 23 **Q** And that deposition took place on December 11, 2020,
10:20:39 24 right?

10:20:39 25 **A** Correct.

10:20:40 1 Q And all the pharmacies that questioned you here,
10:20:42 2 before I've had an opportunity to ask you questions, were
10:20:46 3 there and asked you questions, right?

10:20:48 4 A I don't remember if it was all the same people, but
10:20:50 5 yes.

10:20:51 6 Q Right. And they asked you about this document, right?

10:20:54 7 A I believe so.

10:20:54 8 Q Okay. So your next slide defines "dangerous drug,"
10:21:07 9 right?

10:21:07 10 A Yes.

10:21:07 11 Q Why don't you read that for us.

10:21:10 12 A Sure. "Dangerous drug: Any drug that requires a
10:21:13 13 prescription, includes controlled substances, as well as all
10:21:17 14 noncontrolled prescription drugs such as insulin,
10:21:21 15 antibiotics, cholesterol drugs, heart medications, lifestyle
10:21:24 16 drugs, Cialis, Viagra, and others, always labeled Rx only."

10:21:30 17 So there's a lot of confusion in the general public,
10:21:33 18 and in this case among police officers, that the term
10:21:36 19 "dangerous drug," you know, people think "dangerous," oh,
10:21:39 20 it's dangerous for me, like, I can't -- you know, I
10:21:41 21 shouldn't take it. They confuse the two. That's why we
10:21:48 22 explain to them that "dangerous drug" is any prescription
10:21:50 23 drug.

10:21:50 24 Q Right. And controlled substances have a particular
10:21:52 25 danger because they can be addictive, right?

10:21:55 1 **A** Correct.

10:21:58 2 **Q** And addiction can -- and they can -- a patient can
10:22:01 3 become dependent on them, right?

10:22:03 4 **A** Correct.

10:22:03 5 **Q** And as a result of becoming addicted or dependent,
10:22:09 6 they can become drug seekers, right?

10:22:13 7 **A** Correct.

10:22:13 8 **Q** And the risk of addiction and dependence resulting in
10:22:20 9 drug seeking can often lead to diversion, right?

10:22:22 10 **A** Correct.

10:22:22 11 **Q** And the whole reason for the state regulations and the
10:22:28 12 federal regulations is -- on controlled substances is
10:22:33 13 because it is out of a recognition that these drugs are
10:22:37 14 dangerous, can be addictive, and can lead to diversion,
10:22:42 15 right?

10:22:42 16 **A** Correct.

10:22:43 17 **Q** And that's why this is a highly-regulated industry.
10:22:49 18 In order for the pharmacies in this case to have the ability
10:22:56 19 to dispense drugs, they are required as part of the closed
10:23:03 20 system to follow all of the regulations, right?

10:23:05 21 **A** Correct.

10:23:06 22 **Q** That's important to patient safety, right?

10:23:09 23 **A** Yes.

10:23:10 24 **Q** It's important to public safety, right?

10:23:13 25 **A** Yes.

10:23:14 1 Q It's important for our communities, to protect our
10:23:18 2 communities, against the bad things that happen as a result
10:23:23 3 of diversion, right?

10:23:23 4 A Sure, yes.

10:23:26 5 Q Now, your next slide defines a morphine equivalent
10:23:34 6 daily dose, right?

10:23:35 7 A Yes.

10:23:35 8 Q And in general, tell us what that means.

10:23:38 9 A It's a formula that was developed to basically make
10:23:46 10 different drugs comparable. So, in other words, there's
10:23:51 11 some drugs that come in higher strengths than others, higher
10:23:54 12 quantities than others.

10:23:56 13 So the morphine equivalent daily dose kind of levels
10:23:59 14 the playing field so you can compare different drugs and see
10:24:01 15 the amount of morphine equivalent medication a patient is
10:24:07 16 getting in a 24-hour period.

10:24:09 17 Q Okay. So I'm going to move on a little bit further.

10:24:15 18 And on page 12 of your presentation in 2014 there's a
10:24:21 19 description of what a prescription drug monitoring program
10:24:26 20 is all about and that OARRS is the system in Ohio. Right?

10:24:31 21 A Correct.

10:24:36 22 Q Now, as part of your presentation, I think to explain
10:24:40 23 to the audience the importance of OARRS, vis-à-vis
10:24:49 24 protecting the public health and safety, is you gave some
10:24:52 25 background of the scope of the drug abuse problem, right?

10:24:56 1 **A** Yes.

10:24:56 2 **Q** And here you write, "Prescription opioids are
10:25:03 3 associated with more fatal overdoses than any other
10:25:06 4 prescription or illegal drug, including cocaine, heroin, and
10:25:11 5 marijuana combined."

10:25:12 6 Have I read that correctly?

10:25:15 7 **A** Yes.

10:25:16 8 **Q** And we're talking about 2014 when you gave this
10:25:18 9 presentation, right?

10:25:19 10 **A** Correct.

10:25:20 11 **Q** And the harms and the burden on our society of
10:25:29 12 prescription opioids was not something that just began in
10:25:32 13 2014, right?

10:25:32 14 **A** Correct.

10:25:33 15 **Q** In fact, it had been happening for quite a while, as
10:25:39 16 your next slide, page 15 --

10:25:42 17 MS. FUMERTON: Objection, Your Honor.

10:25:58 18 THE COURT: What's the objection?

10:26:07 19 (At side bar at 10:26 a.m.)

10:26:08 20 THE COURT: What's the objection?

10:26:09 21 MS. FUMERTON: Your Honor, I don't know that
10:26:10 22 Mr. Edwards has foundation to talk about the next few slides
10:26:13 23 that are coming up. Maybe he does --

10:26:17 24 THE COURT: This is his PowerPoint.

10:26:18 25 MS. FUMERTON: But within the information, I

10:26:20 1 can put a PowerPoint together and put forward a bunch of
10:26:23 2 statistics and still don't know --

10:26:24 3 THE COURT: Overruled. He prepared and
10:26:26 4 disseminated this. He can -- he's certainly qualified to
10:26:30 5 talk about what he put into his PowerPoint and what he was
10:26:33 6 disseminating to pharmacists.

10:26:34 7 So overruled.

10:26:38 8 (In open court at 10:26 a.m.)

10:26:47 9 BY MR. WEINBERGER:

10:26:47 10 Q So this slide, which is part of your presentation, is
10:26:54 11 entitled "Unintentional drug overdose deaths of Ohio
10:27:01 12 residents by specific drugs involved by year, 2000 to 2011."

10:27:04 13 And what this is intended to depict is that there are
10:27:10 14 more deaths from prescription opioids than from cocaine,
10:27:13 15 heroin, and marijuana combined, right?

10:27:15 16 A Well, marijuana is not on this list, but
10:27:18 17 benzodiazapines.

10:27:20 18 Q All right. And the top line, this line here, is
10:27:26 19 prescription opioid deaths, right?

10:27:29 20 A Correct.

10:27:32 21 Q And it shows the increase, according to the Ohio
10:27:37 22 Department of Health, from 2000 until 2011, correct?

10:27:39 23 A Correct.

10:27:41 24 Q And your slide, next slide summarizes that data,
10:27:46 25 indicating that there was a 440 percent increase in drug

10:27:51 1 overdose deaths from 1999 to 2011, right?

10:27:55 2 **A** Correct.

10:28:05 3 **Q** And if you go to page 18, this is an interesting slide
10:28:11 4 that you utilized from the CDC Policy Impact-Prescription
10:28:20 5 Painkiller Overdoses, November of 2011.

10:28:23 6 Do you recall this slide?

10:28:26 7 **A** Yes.

10:28:26 8 **Q** So what you were depicting here is that in our country
10:28:31 9 in 2018, there were 14,800 prescription painkiller deaths.
10:28:35 10 Right?

10:28:35 11 **A** Yes.

10:28:35 12 **Q** And for every one of those deaths there were 10
10:28:43 13 treatment admissions for abuse, right?

10:28:45 14 **A** Yes.

10:28:45 15 **Q** And for every one of those deaths there were 32
10:28:52 16 emergency department visits for misuse or abuse?

10:28:55 17 **A** Yes.

10:28:55 18 **Q** So if you wanted to know the total number, you would
10:28:58 19 multiply 14,800, which were deaths, times 32, and you would
10:29:03 20 get the total number of emergency room visits, right?

10:29:06 21 **A** Right.

10:29:07 22 **Q** And for every death there were 130 people who abuse or
10:29:16 23 are dependent, right?

10:29:18 24 **A** Correct.

10:29:19 25 **Q** So again, you could multiply the two, and we don't

10:29:22 1 have the time to do that right now.

10:29:23 2 And then there were, of -- for each death, there were
10:29:31 3 825 nonmedical users, right?

10:29:34 4 **A** Right.

10:29:34 5 **Q** And many of those nonmedical users ended up using
10:29:42 6 because of diversion, right?

10:29:44 7 **A** Well, I don't know. I mean, I would -- if they were a
10:29:49 8 nonmedical user and weren't prescribed the medication, then,
10:29:52 9 yes, there was diversion.

10:29:53 10 **Q** All right. Now, you also, in terms of describing the
10:30:08 11 scope of the drug abuse problem in Ohio, you have this slide
10:30:11 12 that says that there's "enough pain relievers were
10:30:18 13 prescribed in Ohio in 2012 for every man, woman, and child
10:30:21 14 to receive 56.1 milligrams of the daily morphine equivalent
10:30:27 15 doses."

10:30:28 16 Correct?

10:30:28 17 **A** Correct.

10:30:29 18 **Q** All right. So you then -- if you want to flip to page
10:30:37 19 33.

10:30:43 20 See that?

10:30:43 21 **A** Yes.

10:30:43 22 **Q** Here you describe accessing OARRS and who must access
10:30:53 23 it as of 2014, right?

10:30:55 24 **A** Yes.

10:30:55 25 **Q** And specifically with respect to the pharmacists,

10:31:03 1 under 4729-5-20, these are the instances when the
10:31:08 2 pharmacists were mandated as of 2011 to check OARRS, right?

10:31:14 3 **A** Yes.

10:31:14 4 **Q** "If there is a suspicion of overlapping therapy or
10:31:19 5 drug abuse," right?

10:31:20 6 **A** Right.

10:31:21 7 **Q** "The patient has been receiving the drug for more than
10:31:24 8 12 weeks?"

10:31:24 9 **A** Right.

10:31:25 10 **Q** The patient -- "The prescriber is unfamiliar to the
10:31:27 11 pharmacist?"

10:31:28 12 **A** Yes.

10:31:28 13 **Q** "The patient lives outside the usual patient
10:31:33 14 geographic population," right?

10:31:37 15 **A** Right.

10:31:38 16 **Q** Those were all what were commonly known as red flags,
10:31:40 17 right?

10:31:40 18 **A** Correct.

10:31:41 19 **Q** And so these are four specific red flags that should
10:31:47 20 result in a pharmacist -- well, mandates that a pharmacist
10:31:53 21 under those circumstances check OARRS, right?

10:31:56 22 **A** Correct.

10:32:08 23 THE COURT: Mr. Weinberger, I'm just inquiring
10:32:10 24 if you're going to be much longer. If not, I'll let you
10:32:12 25 continue and then take a break. If it's going to be a

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10:32:15 1 while --

10:32:15 2 MR. WEINBERGER: It's a little unclear. I
10:32:19 3 don't hope to be too much longer, but I think right now is a
10:32:21 4 good time for a break.

10:32:23 5 THE COURT: All right, fine.

10:32:24 6 All right, ladies and gentlemen, we'll take our mid
10:32:27 7 morning break, 15 minutes, and then pick up with more
10:32:29 8 testimony from Mr. Edwards.

10:33:02 9 (Recess taken at 10:33 a.m.)

10:47:39 10 (In open court at 10:47 a.m.)

10:47:40 11 MR. STOFFELMAYR: Judge, may I raise one thing
10:47:41 12 before the jury comes out?

10:47:42 13 THE COURT: Okay.

10:47:43 14 MR. STOFFELMAYR: The last few days on
10:48:12 15 multiple occasions Mr. Lanier or Mr. Weinberger have told
10:48:14 16 the jury that they have limited time. They obviously have
10:48:17 17 the same amount of time as all of us put together.

10:48:20 18 THE COURT: I agree. I think everyone should
10:48:23 19 not make any references to time or limited time, or
10:48:27 20 whatever. I agree.

10:48:29 21 MR. STOFFELMAYR: Thank you.

10:48:36 22 MR. WEINBERGER: Fair enough, Your Honor.

10:50:36 23 (The jury is present at 10:50 a.m.)

10:50:37 24 THE COURT: All right. Please be seated,
10:50:38 25 ladies and gentlemen.

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10:50:39 1 And Mr. Edwards, you're still under oath.

10:50:44 2 Mr. Weinberger, you may continue.

10:50:48 3 MR. WEINBERGER: Thank you, Your Honor.

10:50:49 4 BY MR. WEINBERGER:

10:50:50 5 **Q** Mr. Edwards, we're now -- we finished the first stop.

10:50:53 6 Now we're on the second stop, which is inspections.

10:50:58 7 So as I understand it from your testimony, that you
10:51:03 8 have not really done any regular inspections of pharmacies
10:51:06 9 since, well, the last three years, since about 2018?

10:51:11 10 **A** Correct.

10:51:11 11 **Q** And before that time, from 2008 is when you joined the
10:51:19 12 Ohio Board of Pharmacy?

10:51:20 13 **A** Yes, correct.

10:51:20 14 **Q** Until 2018, how many facilities in the various
10:51:26 15 territories that you covered were you responsible for doing
10:51:31 16 inspections?

10:51:31 17 **A** Hundreds.

10:51:34 18 **Q** Hundreds?

10:51:34 19 **A** Hundreds, if not -- well, it was -- because it wasn't
10:51:37 20 just retail pharmacies. I mean, it was anybody licensed
10:51:40 21 with us. We inspected veterinary clinics. We inspected
10:51:45 22 doctors' offices. We inspected first-aid clinics. We
10:51:50 23 inspected the K9 handler at a police department who may
10:51:56 24 have, you know, drugs for training purposes.

10:51:58 25 I mean, it -- yes, hundreds, if not even thousands

10:52:01 1 possibly.

10:52:01 2 **Q** So just using a little bit of data or statistical
10:52:08 3 analysis, would it be fair to say that if you inspected a
10:52:14 4 particular Walgreens or CVS or Walmart location one year, it
10:52:20 5 might take you two or three years before you got back to
10:52:24 6 that location?

10:52:24 7 **A** It could.

10:52:25 8 **Q** Right. And with Mr. Pavlich I used the term "it's a
10:52:32 9 snapshot." It's a couple-of-hour snapshot of the pharmacy
10:52:37 10 operations one time over a -- covering over a couple of
10:52:44 11 years --

10:52:44 12 **A** Correct.

10:52:44 13 **Q** -- with respect to each location, right?

10:52:47 14 **A** Yes.

10:52:47 15 **Q** And so it's not intended to be a comprehensive
10:52:52 16 repeated view from the Ohio Board of Pharmacy's standpoint
10:52:58 17 of what is actually going on in the pharmacy, right?

10:53:00 18 **A** It's what's going on at that particular time frame
10:53:03 19 that I'm in the pharmacy.

10:53:04 20 **Q** Right. Now, are you aware of the fact that these
10:53:11 21 large corporations who run these pharmacies probably have
10:53:15 22 written policies --

10:53:18 23 **A** Yes.

10:53:18 24 **Q** -- for dispensing of controlled substances?

10:53:22 25 **A** Yes.

10:53:23 1 Q Your inspections do not include a review of those
10:53:26 2 policies, do they?

10:53:27 3 A Correct.

10:53:27 4 Q All right. So let's -- so it does not include a
10:53:47 5 review of corporate policies, correct?

10:53:49 6 A Correct.

10:53:51 7 Q Okay. I've written there "true." Is that okay?

10:53:54 8 A Yes.

10:53:55 9 Q And it does not include a review of corporate training
10:53:58 10 of pharmacists, right?

10:54:00 11 A Correct.

10:54:00 12 Q And does it include a review or compilation by store
10:54:16 13 of the opioid pill volumes that are dispensed?

10:54:19 14 A No.

10:54:19 15 Q So it does not include reviewing the volume of
10:54:31 16 controlled substances versus noncontrolled at a particular
10:54:35 17 location, right?

10:54:36 18 A No, we don't count that. No.

10:54:37 19 Q Do you know that to be a red flag, sir?

10:54:42 20 A What? Do I know what to be a red flag?

10:54:47 21 Q If the ratio of the dispensing of controlled
10:54:51 22 substances is significant in relation to noncontrolled, do
10:54:55 23 you know that that's a red flag?

10:54:56 24 A It could be, or it could be that the pharmacy is next
10:54:59 25 door to a hospital, and they see a large volume of emergency

10:55:04 1 room patients or surgery patients.

10:55:06 2 **Q** Right. So -- I'm glad you made that point.

10:55:13 3 The whole purpose of red flags is to raise a

10:55:16 4 concern --

10:55:16 5 **A** Sure.

10:55:17 6 **Q** -- and to then resolve that concern before the

10:55:22 7 prescription is dispensed, right?

10:55:23 8 **A** Yes.

10:55:23 9 **Q** So your inspection does not include a review of the

10:55:33 10 volume of opioid pills, the way it trends, either up or

10:55:39 11 down, with respect to a particular location, right?

10:55:41 12 **A** A regular routine inspection, no, correct, that does

10:55:43 13 not.

10:55:43 14 **Q** Your inspection does not include a review of

10:55:52 15 individual prescriptions for red flag resolution, right?

10:55:58 16 **A** Well, I would potentially look at individual

10:56:01 17 prescriptions, and if I saw an issue, I would make note of

10:56:05 18 it. But it doesn't -- if you mean a broad overall, like,

10:56:09 19 look at every single prescription, no.

10:56:11 20 **Q** How about if I write here "not broad overview"?

10:56:20 21 **A** Correct.

10:56:20 22 **Q** Is that okay?

10:56:21 23 **A** Yes. As you said, it's a snapshot of what we look at

10:56:25 24 in that time period.

10:56:25 25 **Q** Right.

10:56:26 1 It does not -- these inspections do not check how red
10:56:30 2 flags are identified and resolved?

10:56:42 3 **A** Can you rephrase that? Because, I mean, we look for
10:56:45 4 red flags sometimes, but it -- I mean, we don't -- if we
10:56:52 5 notice something that is potentially problematic or a red
10:56:56 6 flag, then we would address it and we would make sure that
10:57:00 7 they resolved it.

10:57:01 8 **Q** Right. So I think your testimony on direct
10:57:03 9 examination was that if you would look through a file of
10:57:09 10 controlled substance prescriptions, C-IIs, it might be from
10:57:13 11 the last couple of days or a week or --

10:57:16 12 **A** Or months. It varied, yeah.

10:57:18 13 **Q** Right. And you would leaf through the hard copies of
10:57:23 14 the prescriptions, right?

10:57:24 15 **A** Correct.

10:57:25 16 **Q** And with respect to Walgreens, you might see a
10:57:29 17 checklist of their targeted drug good faith dispensing,
10:57:35 18 right?

10:57:36 19 **A** Yes.

10:57:36 20 **Q** But in terms of what a -- whether a pharmacist was
10:57:43 21 confronted at the time that the prescription was presented
10:57:48 22 with red flags --

10:57:50 23 **A** Oh, correct.

10:57:50 24 **Q** -- you would have no idea, would you?

10:57:55 25 **A** Correct, no idea.

10:57:56 1 Q So can we say "true" there?

10:58:00 2 A True.

10:58:01 3 Q And your inspection does not check for documentation
10:58:06 4 of red flag resolution other than this checklist, right?

10:58:11 5 A Correct.

10:58:11 6 Q So we'll say "other than Walgreens TD GFD." Okay?

10:58:28 7 A Yes. And that's not something we would ask for, that
10:58:33 8 good faith dispensing policy. Like, that's -- I mean, we
10:58:36 9 would look at it if it was available, but it's -- there was
10:58:38 10 no file of good faith dispensing checklists that we would
10:58:42 11 look through.

10:58:43 12 Q All right. Now, would you agree with me, sir, that in
10:58:47 13 general, if a pharmacist is confronted with a red flag and
10:58:53 14 resolves it, there should be documentation of that?

10:58:55 15 A They should document it in the notes of the -- the
10:58:59 16 patient profile notes, or maybe handwritten on the
10:59:03 17 prescription.

10:59:04 18 Q And isn't it true that you regularly advise
10:59:08 19 pharmacists that if you don't write it down, it didn't
10:59:10 20 happen?

10:59:10 21 A That's common, yes.

10:59:11 22 Q And that's not just, you know, a general rule of
10:59:17 23 thumb. I mean, that's important for patient safety, isn't
10:59:21 24 it?

10:59:21 25 A Correct.

10:59:21 1 Q So that when a pharmacist is about to fill a
10:59:27 2 prescription for a patient who's had a prior opioid
10:59:31 3 prescription filled, documentation of what happened in that
10:59:36 4 first prescription, if there were red flags, is extremely
10:59:40 5 important for patient safety, isn't it?

10:59:43 6 A Sure, yes.

10:59:43 7 Q And it's important for public safety, isn't it?

10:59:48 8 A Yes.

10:59:48 9 Q Your inspections do not check for refusals to fill,
10:59:54 10 right?

10:59:54 11 A No.

10:59:55 12 Q That's true, correct?

10:59:57 13 A That's true, correct.

10:59:58 14 Q So you have found in your experience that OARRS is
11:00:10 15 really an incredible investigation tool, right?

11:00:13 16 A Correct.

11:00:13 17 Q And it's not only for law enforcement that it's an
11:00:18 18 incredible tool. It really is an incredible tool, if used
11:00:21 19 properly and timely, for pharmacists, right?

11:00:28 20 A Correct.

11:00:28 21 Q I mean, it has been demonstrated -- strike that.

11:00:33 22 At the Ohio Board of Pharmacy department, it has been
11:00:41 23 demonstrated to you and the other field agents that the
11:00:47 24 timely and appropriate use of OARRS can reduce diversion,
11:00:50 25 correct?

11:00:51 1 **A** Correct.

11:00:51 2 **Q** And so it is an important tool to protect patient and
11:00:57 3 public safety, correct?

11:00:58 4 **A** Correct.

11:00:58 5 **Q** And OARRS went into effect in 2006, right?

11:01:03 6 **A** Correct.

11:01:03 7 **Q** And it started to accumulate data from both pharmacies
11:01:09 8 and distributors as of that time, right?

11:01:13 9 **A** I don't know if distributors reported it that far
11:01:17 10 back, but -- I know they do now, but I don't know if they
11:01:20 11 did at the beginning.

11:01:21 12 **Q** So let's just talk about pharmacies.

11:01:23 13 **A** Sure.

11:01:23 14 **Q** Pharmacies began to take their dispensing data and
11:01:27 15 send it to OARRS as of 2006?

11:01:30 16 **A** Correct.

11:01:30 17 **Q** Right?

11:01:31 18 And so as the information was accumulated in the OARRS
11:01:39 19 database, it was made available to pharmacists to check
11:01:46 20 within, let's say, a year of 2006, right?

11:01:48 21 **A** Correct.

11:01:49 22 **Q** Now, maybe it wasn't mandatory until 2011 under
11:01:53 23 certain circumstances, but there was certainly nothing to
11:01:57 24 prevent pharmacists from checking OARRS as of, let's say,
11:02:02 25 mid 2006 or 2007, right?

11:02:05 1 **A** Well, only -- their own limitations within their
11:02:09 2 pharmacy was all that would prevent them, you know, like bad
11:02:12 3 Internet service or, you know, not -- the pharmacy not
11:02:15 4 allowing them to access outside Internet.

11:02:18 5 **Q** Right. Or not being encouraged to do it, right?

11:02:20 6 **A** Or that.

11:02:21 7 **Q** Right?

11:02:22 8 But certainly as of October of 2011, it was mandated
11:02:31 9 under certain circumstances that we've discussed, right?

11:02:34 10 **A** Correct, yes.

11:02:34 11 **Q** Now, from your own knowledge, isn't it true that these
11:02:45 12 pharmacies have their own databases of prescription data?

11:02:50 13 **A** Yes.

11:02:50 14 **Q** And that dispensing data, in your mind, could also
11:02:58 15 help pharmacists identify and resolve red flags, right?

11:03:02 16 **A** Sure.

11:03:02 17 **Q** And you are aware of the fact, are you not, sir, that
11:03:11 18 the pharmacies provide their dispensing data to companies
11:03:16 19 who then turn around and sell the data to manufacturers?

11:03:21 20 MR. DELINSKY: Objection, Your Honor.

11:03:29 21 THE COURT: Overruled.

11:03:31 22 **A** I'm aware from past dealings with a drug rep who I
11:03:40 23 know, who I've known since childhood, that they had access
11:03:44 24 to information on prescriptions that I didn't have access
11:03:48 25 to, but I don't -- I didn't know how they got it.

11:03:51 1 But your assertion that they purchased it --

11:03:55 2 MR. SWANSON: Objection, Your Honor.

11:03:57 3 THE COURT: Well, sustained.

11:04:04 4 MR. SWANSON: Can we get that stricken?

11:04:08 5 THE COURT: Well, no. What he said was okay,

11:04:10 6 but he was going on to say something that I stopped.

11:04:16 7 BY MR. WEINBERGER:

11:04:16 8 **Q** So you are aware of the fact that sales reps for

11:04:19 9 manufacturers of prescriptions had access to dispensing

11:04:22 10 data, right? Yes?

11:04:22 11 **A** I don't --

11:04:28 12 Mr. SWANSON: Objection, Your Honor.

11:04:29 13 THE COURT: Well, he can answer yes or no, if

11:04:31 14 he was aware of it.

11:04:33 15 MR. DELINSKY: Your Honor, hearsay.

11:04:35 16 THE COURT: Well, overruled.

11:04:36 17 **A** I was aware they had information --

11:04:38 18 THE COURT: You can just answer yes or no,

11:04:40 19 sir.

11:04:41 20 **A** No.

11:04:41 21 **Q** Okay. Well, I got a yes and then a no, so which is

11:04:48 22 it?

11:04:49 23 **A** The way you phrased the question, the answer is no.

11:04:53 24 **Q** Did you come to learn at some point that sales reps

11:04:57 25 who call on doctors on behalf of manufacturers have access

11:05:01 1 to prescription data?

11:05:03 2 **A** I knew they had access to the information in terms of
11:05:09 3 what medications were being dispensed and how much, but I
11:05:12 4 don't know how specific that information was; if it was
11:05:16 5 actual dispensing data, like with patient information and
11:05:19 6 stuff like that, or was it just volume, you know, data.

11:05:23 7 **Q** But you became aware of the fact that this information
11:05:26 8 was coming from the pharmacies, right?

11:05:27 9 **A** Yes. Well, no, no. I didn't know where it came from.

11:05:31 10 **Q** All right. Well, who would be maintaining dispensing
11:05:35 11 data other than the pharmacies?

11:05:38 12 MR. SWANSON: Objection, Your Honor.

11:05:39 13 MR. DELINSKY: Objection.

11:05:43 14 THE COURT: I'll sustain that.

11:05:45 15 **Q** All right. Let's move along to the last stop,
11:05:49 16 investigations.

11:05:55 17 When you were employed by the Lake County Narcotics
11:05:58 18 Agency, sir, you became involved in an investigation
11:06:04 19 involving Dr. Franklin, right?

11:06:06 20 **A** Yes.

11:06:06 21 **Q** And you worked -- that's Dr. Peter Franklin from
11:06:16 22 Middlefield, Ohio, in Geauga County, right?

11:06:23 23 **A** Yes.

11:06:23 24 **Q** And you worked on the case when you were working for
11:06:24 25 Lake County with George Pavlich and others from the Ohio

11:06:28 1 Board of Pharmacy, right?

11:06:28 2 **A** Correct. I believe that case spanned both of my -- it
11:06:33 3 spanned my transition from one job to the next, I believe.

11:06:35 4 **Q** Right. The investigation began sometime in 2007 and
11:06:40 5 concluded actually in 2009, when Dr. Franklin was murdered
11:06:44 6 by his wife, right?

11:06:44 7 **A** Correct, yes.

11:06:45 8 **Q** And as part of that investigation, you executed, you
11:06:58 9 were the affiant, you were the person who provided an
11:07:00 10 affidavit --

11:07:03 11 **A** Correct.

11:07:03 12 **Q** -- for a search warrant, right?

11:07:04 13 **A** Correct.

11:07:04 14 **Q** Okay.

11:07:07 15 MR. WEINBERGER: Plaintiffs' Exhibits P-04553.

11:07:31 16 MR. SWANSON: Your Honor, could we be heard on
11:07:33 17 this before it's shown?

11:07:35 18 THE COURT: Okay.

11:07:40 19 (At side bar at 11:07 a.m.)

11:07:50 20 MR. SWANSON: Your Honor, I'd object. This is
11:07:54 21 improper cross, it goes beyond the scope of what was
11:07:56 22 covered. This is the Franklin and Overholt's investigation
11:08:00 23 that we didn't ask a single question about it.

11:08:03 24 THE COURT: But Pavlich was.

11:08:05 25 MR. SWANSON: Right, but I wasn't allowed to

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11:08:06 1 use this document with Mr. Pavlich, who actually wrote it.

11:08:14 2 MR. WEINBERGER: Your Honor, he's one of the
11:08:15 3 affiants --

11:08:16 4 THE COURT: Well, if that's -- hold it. I
11:08:25 5 don't recall exactly how you sought to use it with Pavlich.
11:08:27 6 I would have allowed testimony on the investigation of
11:08:32 7 Dr. Franklin. The jury's heard plenty of that.

11:08:36 8 So I don't recall, Mr. Swanson, that I prohibited you
11:08:41 9 from using this document with Mr. Pavlich.

11:08:47 10 MR. SWANSON: Okay. Well, I wanted to make
11:08:49 11 you aware of our objection.

11:08:53 12 THE COURT: We'll see what the questions are
11:08:54 13 going to be.

11:08:58 14 MR. DELINSKY: Your Honor, I believe, if my
11:08:59 15 recollection serves me right, it was used to be able to
11:09:01 16 refresh recollection, but it was not displayed to the jury,
11:09:02 17 it was not allowed to be entered into evidence.

11:09:06 18 THE COURT: Mr. Weinberger, where are you
11:09:08 19 going with this and what questions are you going to ask him?

11:09:11 20 MR. WEINBERGER: Your Honor, he is one of
11:09:13 21 three affiants on the search warrant.

11:09:14 22 THE COURT: I understand that, but there's a
11:09:18 23 lot of hearsay in here, and everyone knows that Franklin was
11:09:20 24 investigated and prosecuted.

11:09:22 25 MR. WEINBERGER: So the search warrant

11:09:27 1 affidavit talks about the fact that OARRS was checked, that
11:09:30 2 they came up with a number of patients who --

11:09:36 3 THE COURT: Who checked OARRS?

11:09:39 4 MR. WEINBERGER: The affiant checked OARRS.

11:09:42 5 THE COURT: But the point, you can just ask
11:09:44 6 him that. You're trying to bring out that they used OARRS
11:09:47 7 to investigate Franklin? That's fair. You can ask him
11:09:51 8 that.

11:09:51 9 MR. WEINBERGER: And so look specifically at
11:09:55 10 page 27 of this exhibit, Your Honor, so you know exactly
11:09:59 11 where I'm heading.

11:10:03 12 At the bottom of the page it says, "The following top
11:10:09 13 five pharmacies in Ohio were documented to have dispensed
11:10:13 14 the majority of prescriptions." And you go on to the next
11:10:16 15 page, it lists Overholt's, Revco, CVS, and Walgreens.

11:10:25 16 And so it's my intent to ask about that, and it's my
11:10:29 17 intent to ask whether or not they pulled the prescriptions
11:10:32 18 from Walgreens and CVS as part of the investigation, and
11:10:38 19 whether or not they identified red flags associated with
11:10:42 20 that as part of their investigation.

11:10:45 21 MR. SWANSON: Your Honor, it shows every
11:10:47 22 Walgreens in the State of Ohio, so we object on the scope of
11:10:50 23 that.

11:10:51 24 MR. WEINBERGER: Well, Your Honor, if I'm not
11:10:53 25 allowed to ask this question --

11:10:54 1 THE COURT: Well, hold it.

11:10:56 2 MR. WEINBERGER: If I'm not allowed to pursue
11:10:59 3 this line, then the entire evidence that they've put in
11:11:05 4 about -- and this was an investigation that included
11:11:09 5 Overholt's -- that involves Overholt's and Franklin should
11:11:12 6 be stricken from the record.

11:11:18 7 MR. SWANSON: Your Honor, I don't even
11:11:19 8 understand that.

11:11:20 9 THE COURT: I don't understand that, and I
11:11:21 10 don't -- I mean, all right, this is -- I mean, hold it.

11:11:31 11 Why is it relevant that Walgreens dispenses 5 percent
11:11:36 12 of the prescriptions throughout the state of Ohio? I mean,
11:11:42 13 it's probably true, but what relevance is that?

11:11:45 14 MR. WEINBERGER: But these are prescriptions
11:11:46 15 written by Dr. Franklin.

11:11:50 16 THE COURT: I don't know what it is. I can't
11:11:52 17 tell what it is. It doesn't say that. Where does it say
11:11:57 18 that?

11:11:57 19 MR. WEINBERGER: Your Honor, look at the
11:11:58 20 paragraph immediately before what I read to you. They
11:12:03 21 prepared the electronic data reference Dr. Franklin
11:12:08 22 controlled drug prescriptions. The chart documented the
11:12:11 23 number of prescriptions and who dispensed them.

11:12:19 24 MR. LANIER: Your Honor, for the record, I
11:12:22 25 pulled up the testimony where Pavlich went through this, and

11:12:29 1 an affidavit was asked by Mr. Swanson of Pavlich. He showed
11:12:33 2 him the affidavit.

11:12:34 3 He asked him: Looking through the prescriptions, did
11:12:37 4 you see any prescriptions that stated that the prescription
11:12:39 5 should be filled only at Overholt's?

11:12:41 6 Mr. Weinberger objected, you overruled.

11:12:43 7 The witness said: I did.

11:12:45 8 Question: Was it on one prescription or many?

11:12:48 9 I don't recall how many, but I saw numerous.

11:12:50 10 Was that suspicious?

11:12:51 11 Yes, it was.

11:12:52 12 As part of your investigation in Franklin and
11:12:57 13 Overholt's, did you retain medical experts?

11:13:00 14 And he goes on and on and on.

11:13:02 15 The point is, yes, he elicited that testimony about
11:13:04 16 what was done over at Overholt's, but the investigation also
11:13:08 17 revealed information that showed prescriptions being filled
11:13:10 18 at Walgreens.

11:13:12 19 THE COURT: All right. Well, look, I will
11:13:13 20 allow you to ask this witness if, in addition to
11:13:20 21 investigating prescriptions that Franklin wrote at
11:13:23 22 Overholt's, did he investigate prescriptions Franklin wrote
11:13:28 23 and were filled at other pharmacies, Rite Aid, Revco,
11:13:33 24 Newberry, Walgreens, Walmart, CVS, whatever; see what he
11:13:36 25 says. All right?

11:13:38 1 You can ask him if that was part of his investigation,
11:13:40 2 and if he says yes, fine. You can bring out if he says no,
11:13:46 3 you can ask him why not, and see what he says. It's part of
11:13:51 4 his investigation.

11:13:53 5 MS. FUMERTON: So, Your Honor, my request
11:13:54 6 would be though that Mr. Weinberger not ask the question in
11:13:57 7 the aggregate. Obviously Walmart's not listed here.

11:13:59 8 THE COURT: I agree, it should be specific,
11:14:02 9 all right? I mean, he looked at Overholt's, we know that.

11:14:07 10 MR. WEINBERGER: Your Honor, I'm sorry, I'm
11:14:08 11 having trouble following this.

11:14:10 12 This is a document prepared by this witness. I'm
11:14:15 13 cross-examining the witness. I don't understand -- I don't
11:14:19 14 need to have his memory refreshed. I don't need to -- I'm
11:14:23 15 not using it for impeachment.

11:14:26 16 THE COURT: You can ask him if he investigated
11:14:27 17 any other pharmacies. If he says no, you can say, well,
11:14:30 18 here's your document. You know, did you look at any of the
11:14:35 19 other pharmacies where Overholt's -- where Franklin's
11:14:41 20 prescriptions were filled. You can ask him if he
11:14:42 21 investigated any other pharmacies, and specifically Rite
11:14:45 22 Aid, CVS, Walgreens, whatever. If he says yes, you can
11:14:51 23 elaborate. If he says no, you can ask him, well, why not.

11:14:54 24 If you want to impeach him that he didn't do a
11:14:57 25 thorough investigation, that's fine, you can. It's in here,

11:15:00 1 so you can ask him whether he -- whether as part of his
11:15:04 2 investigation of Overholt's and Franklin he looked at
11:15:07 3 Franklin and any other pharmacy. That's fine, I'll allow
11:15:13 4 that.

11:15:16 5 (In open court at 11:15 a.m.)

11:15:30 6 BY MR. WEINBERGER:

11:15:30 7 **Q** Agent Edwards, as part of your investigation that you
11:15:34 8 participated in with respect to Dr. Franklin, did it also
11:15:38 9 include the Overholt's in Trumbull County?

11:15:42 10 **A** Yes.

11:15:42 11 **Q** Did your investigation also include pulling
11:15:46 12 prescriptions written by Dr. Franklin from Walgreens and
11:15:49 13 from CVS?

11:15:50 14 **A** I don't recall the details of -- I recall that it was
11:15:56 15 George Pavlich's case with the Board of Pharmacy and I
11:15:59 16 assisted, but I don't recall the specific things that I did.

11:16:04 17 **Q** Right. Just without putting it on the screen, I'm
11:16:07 18 going to ask you to look at this exhibit, Plaintiffs'
11:16:15 19 Exhibit 04553, page 5.

11:16:26 20 Do you have that in front of you?

11:16:28 21 **A** The first page of the affidavit?

11:16:29 22 **Q** Yes.

11:16:30 23 **A** Yes.

11:16:30 24 **Q** That is an affidavit for a search warrant, right?

11:16:31 25 **A** Correct.

11:16:32 1 Q And you are identified as one of the people who is
11:16:39 2 executing or who is signing this search warrant, correct?

11:16:43 3 A Correct.

11:16:43 4 Q And it even on page 7 describes you as Affiant Special
11:17:01 5 Agent Trey Edwards and talks about your experience as a law
11:17:06 6 enforcement investigator, as a pharmacy investigator for the
11:17:09 7 Lake County Narcotics Agency. Correct?

11:17:12 8 A Yes.

11:17:12 9 Q And it talks about how you've conducted 75 -- "this
11:17:20 10 investigator has conducted over 800 investigations involving
11:17:25 11 illegal diversion of prescription drugs," right?

11:17:29 12 A Correct.

11:17:30 13 Q And going to page 9, second paragraph from the bottom,
11:17:46 14 it discusses the fact that "One year electronic OARRS review
11:17:52 15 of prescribing data from Dr. Franklin was obtained,"
11:17:56 16 correct?

11:17:57 17 A Correct.

11:17:57 18 Q And going to page 27. The second-to-last paragraph
11:18:19 19 talks about that "Electronic data" -- "Known electronic data
11:18:26 20 reference Dr. Franklin's controlled drug prescriptions
11:18:30 21 dispensed in Ohio during the period of April 2006 until June
11:18:36 22 of 2008, right?

11:18:37 23 A Yeah, I'm not -- I'm not seeing that on -- you said
11:18:40 24 page 27?

11:18:40 25 Q Page 27, about a third of the way down -- two-thirds

11:18:45 1 of the way down.

11:18:47 2 "This agent was assisted by Specialist Mandi in
11:18:52 3 preparing the known," do you see that?

11:18:55 4 **A** Yes.

11:18:55 5 **Q** In preparing the known --

11:18:56 6 MR. WEINBERGER: May I show this on the
11:18:58 7 screen, Your Honor?

11:18:59 8 MR. DELINSKY: Objection.

11:19:00 9 Your Honor, may we go on the headset?

11:19:05 10 MR. WEINBERGER: Your Honor, I'm going to
11:19:06 11 withdraw the question.

11:19:08 12 THE COURT: You can ask the first question
11:19:10 13 again if you want, if this refreshes his recollection.

11:19:15 14 MR. WEINBERGER: All right.

11:19:16 15 BY MR. WEINBERGER:

11:19:16 16 **Q** Having now read this, do you recall that the
11:19:19 17 electronic data referencing Dr. Franklin's prescriptions
11:19:24 18 dispensed was prepared for that two-year period of time?

11:19:29 19 **A** No, this was George Pavlich's report. This is not --
11:19:32 20 when it says "this agent," that is not me. That was George
11:19:36 21 Pavlich.

11:19:36 22 **Q** Right. But if you look at the very last page of this
11:19:40 23 document, page 40, 41, you're one of the people that signed
11:19:49 24 off on this search warrant, right?

11:19:51 25 **A** Correct, yes.

11:19:52 1 Q So you were as an affiant submitting an affidavit, you
11:19:58 2 were attesting to the truth of this search warrant, right?

11:20:00 3 A Correct, yes. You're asking if I recall this, so I
11:20:04 4 don't -- I don't recall.

11:20:06 5 Q Right. So but to be clear, you signed off on this
11:20:09 6 affidavit attesting to its truth, right?

11:20:11 7 A Correct.

11:20:11 8 Q And so going back to page 27 --

11:20:18 9 MR. DELINSKY: Objection, Your Honor.
11:20:19 10 Headset, please.

11:20:24 11 (At side bar at 11:20 a.m.)

11:20:45 12 MR. DELINSKY: Your Honor, the witness
11:20:46 13 testified that he doesn't remember it.

11:20:50 14 THE COURT: All right. So Mr. Weinberger can
11:20:52 15 ask him questions specifically about whether they
11:20:58 16 investigated any other pharmacies that filled Franklin's
11:21:06 17 prescriptions. It's in the affidavit. The man swore to it.
11:21:09 18 If he says no, he doesn't recall even with this, then that's
11:21:11 19 the end of it.

11:21:13 20 MR. SWANSON: Your Honor, to be clear, I think
11:21:14 21 what he just testified to is that he swore to questions that
11:21:19 22 he's responsible for.

11:21:21 23 THE COURT: It doesn't work that way,
11:21:23 24 Mr. Swanson. I'm a judge. Someone swears in front of me,
11:21:26 25 they don't swear in a limited way.

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11:21:28 1 MR. SWANSON: This isn't signed either.

11:21:35 2 THE COURT: Well, I agree, this doesn't -- I
11:21:38 3 mean, it's an un- -- it isn't even signed by the judge, so I
11:21:47 4 don't know if this was --

11:21:47 5 MR. WEINBERGER: Your Honor, this document was
11:21:49 6 produced in discovery by Trumbull County, and has been in
11:21:57 7 the defendants' possession.

11:22:01 8 MR. SWANSON: That's true.

11:22:01 9 THE COURT: Well, you can -- Mr. Weinberger,
11:22:03 10 you better ask him again. This document is unsigned, all
11:22:09 11 right? You better ask him. If he acknowledges signing it,
11:22:13 12 all right, then you can ask him specifically. And you
11:22:18 13 should ask him specifically about the investigation, whether
11:22:21 14 they looked into it or not.

11:22:23 15 MR. WEINBERGER: He already testified, Your
11:22:24 16 Honor, that he signed off on the affidavit attesting to its
11:22:27 17 truth.

11:22:29 18 THE COURT: Well, ask him about his
11:22:31 19 investigation, what they looked at, if they did or they
11:22:35 20 didn't. Maybe they didn't look into anyone else other than
11:22:38 21 Overholt's. That's probably going to be his answer.

11:22:42 22 MR. SWANSON: Your Honor, I was only allowed
11:22:46 23 to use this to refresh Mr. Pavlich's recollection. That was
11:22:50 24 all I --

11:22:51 25 THE COURT: I've asked Mr. Weinberger to ask

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11:22:53 1 him the specific question that he's trying to get at, which
11:22:56 2 is whether he and Pavlich investigated Franklin's
11:23:01 3 prescriptions that were filled anywhere else besides
11:23:04 4 Overholt's. Either they did or they didn't. I have no idea
11:23:07 5 if they did or they didn't.

11:23:09 6 MR. WEINBERGER: The affidavit says they did.

11:23:10 7 THE COURT: Not really. The affidavit just
11:23:12 8 cites that they -- you know, where the prescriptions were
11:23:15 9 filled. It doesn't say they looked at it at all.

11:23:18 10 MR. WEINBERGER: Okay. I got it. Thank you.

11:23:23 11 (In open court at 11:23 a.m.)

11:23:36 12 BY MR. WEINBERGER:

11:23:38 13 **Q** Agent Edwards, as part of your investigation of
11:23:40 14 Dr. Franklin and the Overholt's, did you also investigate
11:23:46 15 prescriptions filled at Walgreens or CVS that were
11:23:52 16 Dr. Franklin's prescriptions?

11:23:53 17 **A** I don't recall which prescriptions I pulled or
11:23:56 18 accessed, but most likely.

11:23:58 19 **Q** Most likely you did?

11:24:00 20 **A** Most likely I did. I don't recall -- I mean, he
11:24:04 21 dispensed a ton -- he wrote a ton of prescriptions. I don't
11:24:07 22 recall which specific pharmacies we got those prescriptions
11:24:10 23 from.

11:24:10 24 **Q** Well, did you learn as part of your investigation, if
11:24:15 25 you go on to the next page, page 28 --

11:24:18 1 MR. DELINSKY: Objection, Your Honor.

11:24:18 2 THE COURT: Overruled.

11:24:19 3 Q -- that there were 1418 Dr. Franklin prescriptions
11:24:30 4 that were dispensed at CVS?

11:24:33 5 MR. DELINSKY: Objection, Your Honor.

11:24:34 6 MR. SWANSON: Objection, Your Honor.

11:24:34 7 THE COURT: Overruled.

11:24:35 8 A I see that, yes.

11:24:36 9 Q And there were 780 Dr. Franklin prescriptions filled
11:24:41 10 at a Walgreens, right?

11:24:43 11 A Yes.

11:24:43 12 Q So my question is, did you go to Walgreens in Trumbull
11:24:49 13 County or elsewhere, or CVS in Trumbull County or elsewhere,
11:24:53 14 and ask for those prescriptions?

11:24:54 15 A I don't recall if I did that or if another agent
11:24:57 16 involved in this investigation did that. It could have been
11:24:59 17 the Board of Pharmacy that pulled those prescriptions. I
11:25:06 18 don't recall.

11:25:06 19 Q And finally, sir, you were shown this document.

11:25:13 20 A Yes.

11:25:14 21 Q Defendants' Exhibit 12782, regarding an educational
11:25:23 22 program from the Lake County Narcotics Agency that involved
11:25:28 23 a speaker from Purdue.

11:25:31 24 Do you recall that?

11:25:31 25 A Yes.

11:25:32 1 Q And you are at least aware today, perhaps not back
11:25:40 2 then, that Purdue was involved in heavily marketing the drug
11:25:47 3 OxyContin, correct?

11:25:50 4 A Right, yes.

11:25:50 5 Q And they used sales reps to call on physicians as part
11:25:54 6 of that marketing, correct?

11:25:55 7 A I'm aware of that today, correct.

11:25:56 8 Q Right. And but you weren't aware of that in 2005?

11:26:01 9 A Correct.

11:26:01 10 Q And you're aware of the fact that some of the
11:26:04 11 marketing included misrepresentations regarding the
11:26:10 12 addictive nature of OxyContin, correct?

11:26:12 13 A Correct, yes.

11:26:13 14 Q But you didn't know that back then in 2005, right?

11:26:15 15 A Correct.

11:26:16 16 Q Are you aware of the fact now that Purdue's marketing
11:26:20 17 program involved more than just having their sales reps call
11:26:25 18 on doctors?

11:26:26 19 A Yes.

11:26:26 20 Q It was very broad-ranged, wasn't it?

11:26:31 21 A Yes.

11:26:31 22 Q It involved employing speakers to go out and talk
11:26:37 23 about the drug, right?

11:26:38 24 A Yes.

11:26:39 25 Q It involved providing money to front groups to talk

11:26:45 1 about the drug, right?

11:26:46 2 **A** What do you mean by front groups?

11:26:47 3 **Q** Third-party organizations that they supported to
11:26:54 4 publish information about OxyContin. You're aware of that,
11:26:58 5 right?

11:26:58 6 **A** Sure, sure, yes.

11:26:59 7 **Q** And so as I understand it, you were at a program where
11:27:05 8 somebody from Purdue indicated to you that they were
11:27:12 9 prepared to send a speaker out to assist you in an
11:27:18 10 educational program, right?

11:27:19 11 **A** Correct.

11:27:19 12 **Q** And as you look back on that now, part of their
11:27:24 13 marketing program, right?

11:27:25 14 **A** Yes.

11:27:29 15 MR. WEINBERGER: Thank you, Your Honor. Pass
11:27:30 16 the witness.

11:27:31 17 THE COURT: Okay. We'll see if any jurors
11:27:36 18 have any questions before Mr. Swanson gets up.

11:27:40 19 MR. DELINSKY: Your Honor, while we're waiting
11:27:41 20 for those, could we go on the headset briefly?

11:27:45 21 THE COURT: Okay.

11:27:46 22 (At side bar at 11:27 a.m.)

11:28:08 23 MR. DELINSKY: Your Honor, when Agent Edwards
11:28:23 24 was asked about the specific number of fills that appear in
11:28:27 25 the affidavit, his answer was, "I see that." He was reading

11:28:33 1 off the document, and that's -- he did not indicate he had
11:28:36 2 any independent recollection. And I asked that --

11:28:39 3 THE COURT: But he swore to it, Mr. Delinsky,
11:28:40 4 okay? He swore to it. The whole point was whether he
11:28:44 5 investigated it, and then he said, I don't know if we did.
11:28:47 6 So that ended it. The point is he swore to this, so --

11:28:51 7 MR. DELINSKY: I request that the testimony be
11:28:54 8 stricken, Your Honor.

11:28:55 9 THE COURT: Overruled.

11:28:56 10 MR. SWANSON: Your Honor, just so it's clear,
11:28:59 11 Mr. Weinberger was able to use this document. I do intend
11:29:02 12 to get into other details of the investigation --

11:29:03 13 THE COURT: That's fine. You can do that.

11:29:06 14 MR. SWANSON: -- including what I did with
11:29:08 15 Mr. Pavlich. Thank you.

11:29:09 16 THE COURT: You can get into the details of
11:29:10 17 what he did and what he didn't investigate, sure.

11:29:13 18 MR. SWANSON: Thank you.

11:29:14 19 (In open court at 11:29 a.m.)

11:30:59 20 (Juror question review.)

11:32:06 21 - - - - -

11:32:06 22 REDIRECT EXAMINATION

11:32:08 23 BY MR. SWANSON:

11:32:08 24 Q Okay. Agent Edwards, the jury has the opportunity to
11:32:11 25 ask some questions and write them down, so I'm going to go

11:32:14 1 through those with you in a moment to see if you have
11:32:17 2 answers.

11:32:17 3 **A** Okay.

11:32:18 4 **Q** But before we get to that, I wanted to just pick up
11:32:21 5 where you left off with Mr. Weinberger, talking about your
11:32:25 6 investigation into Dr. Franklin and Overholt's Pharmacy.

11:32:32 7 Do you recall that?

11:32:33 8 **A** Yes.

11:32:33 9 **Q** Just that topic generally.

11:32:35 10 And he gave you, to refresh your memory, a search
11:32:41 11 warrant that you had been a part of; is that right?

11:32:43 12 **A** Correct.

11:32:43 13 **Q** Okay. I have some more specific questions about that
11:32:47 14 investigation.

11:32:49 15 If you could turn, please, to page 16.

11:33:02 16 **A** Okay.

11:33:02 17 **Q** And look at the very bottom paragraph.

11:33:09 18 Do you recall as part of that investigation learning
11:33:13 19 that the prescriptions that Dr. Franklin was writing, he was
11:33:18 20 writing on the bottom of some of those "Fill only at
11:33:23 21 Overholt's Pharmacy Champion"? Do you recall that?

11:33:27 22 **A** I don't recall that that was written on the
11:33:29 23 prescriptions, but I do recall that the vast -- you know,
11:33:31 24 the majority of prescriptions were filled there.

11:33:33 25 **Q** Okay. And looking at this document, does that refresh

11:33:35 1 your recollection that some of them were filled there
11:33:37 2 because that's what Dr. Franklin was ordering?

11:33:40 3 **A** Yes.

11:33:40 4 **Q** Now, as part of this investigation, did you come to
11:33:46 5 the conclusion that every patient who was going to see
11:33:50 6 Dr. Franklin was a pill seeker?

11:33:52 7 **A** No.

11:33:56 8 **Q** Were some of the patients who went to see Dr. Franklin
11:34:00 9 legitimate patients with legitimate need?

11:34:01 10 **A** I believe so.

11:34:02 11 **Q** Now, as part -- if you can turn then to page I believe
11:34:05 12 it was 27. And Mr. Weinberger had asked you about if you
11:34:22 13 recalled if you'd looked at any prescriptions that had been
11:34:24 14 filled at Walgreens.

11:34:25 15 Do you remember that?

11:34:26 16 **A** Yes.

11:34:26 17 **Q** Do you recall that when you ran the OARRS report to
11:34:32 18 obtain that data you looked at every single Walgreens in the
11:34:36 19 state of Ohio?

11:34:37 20 **A** I did not do that. That would have been Agent Pavlich
11:34:41 21 that conducted that search.

11:34:41 22 **Q** But looking at this document, does that refresh you
11:34:45 23 that his search was of all Walgreens pharmacies in Ohio?

11:34:49 24 **A** Yes.

11:34:49 25 **Q** And did he find that in all the Walgreens pharmacies

11:34:55 1 in Ohio, only 5 percent of the scripts you looked at had
11:34:58 2 been filled in those stores?

11:35:00 3 **A** Correct.

11:35:00 4 **Q** And that's compared to 50 percent that had been filled
11:35:04 5 at the Overholt's Pharmacy?

11:35:06 6 **A** Yes.

11:35:06 7 **Q** One single pharmacy?

11:35:07 8 **A** Yes.

11:35:07 9 **Q** Do you know how many Walgreens pharmacies there are in
11:35:10 10 the state of Ohio?

11:35:10 11 **A** No.

11:35:11 12 **Q** Do you know if the patients who filled their
11:35:14 13 prescriptions at Walgreens from Dr. Franklin in Ohio were
11:35:18 14 legitimate patients or illegitimate patients?

11:35:20 15 **A** I don't know.

11:35:21 16 **Q** Do you recall as part of your investigation talking to
11:35:31 17 Mr. Stossel at Walgreens?

11:35:35 18 **A** I don't know. I have talked to Mr. Stossel many
11:35:37 19 times. I don't recall specific conversations related to
11:35:41 20 this investigation.

11:35:44 21 **Q** Can you flip to page 31 of the document, please.

11:35:48 22 **A** Yes.

11:35:49 23 **Q** Do you see the very last paragraph there?

11:35:52 24 **A** Yes.

11:35:52 25 **Q** Does that refresh your recollection that as part of

11:35:55 1 your investigation you went and you met with Dr. Stossel --
11:36:00 2 or, excuse me, with Mr. Stossel at Walgreens?

11:36:02 3 **A** I believe that would have been George Pavlich met
11:36:05 4 with --

11:36:05 5 **Q** Okay. So you don't recall meeting with --

11:36:07 6 **A** I do not.

11:36:08 7 **Q** But you recall that Mr. Pavlich did?

11:36:10 8 **A** Yes. I mean, this is his report, and it's -- when he
11:36:12 9 refers in the first person, he was referring to himself.

11:36:17 10 **Q** Got it. Okay.

11:36:18 11 I think those are the questions that I have on that.
11:36:20 12 Let's move over to the jury questions.

11:36:33 13 Okay. Question -- and I'll just read it. You can
11:36:38 14 read it to yourself, but I'll read it into the record.

11:36:40 15 "Can you recall if citations were issued to any of the
11:36:44 16 defendants? If so, was that citation mainly pharmacist
11:36:50 17 error/mistake or something due to that company policy?"

11:36:54 18 **A** I don't recall specific citations. I'm certain -- I'm
11:37:02 19 pretty certain the majority of our citations are individual
11:37:07 20 citations, like individual pharmacists. I don't recall
11:37:10 21 citations that were issued to a specific chain or, you know,
11:37:17 22 a whole chain. It's usually -- our citations are almost
11:37:22 23 exclusively involving one pharmacist or a particular store.
11:37:25 24 I don't recall a wholesale citation against one particular
11:37:31 25 chain.

11:37:31 1 Q And when you use that term "citation," what are you
11:37:35 2 referring to?

11:37:35 3 A That's the next step after a written warning. A
11:37:40 4 citation would be we complete a report. If we find that the
11:37:44 5 issue is egregious enough that the Board might want to have
11:37:48 6 further conversations about this issue, so we present it to
11:37:53 7 the Board -- or to the Board for a cite review. They review
11:37:58 8 it and decide whether or not they want to have a hearing or
11:38:02 9 not.

11:38:02 10 Q And do you recall any citations being issued to
11:38:04 11 Walgreens?

11:38:05 12 A No. To Walgreens Corporation?

11:38:08 13 Q Correct.

11:38:09 14 A No.

11:38:09 15 Q Any citations being issued to CVS Corporation?

11:38:13 16 A No.

11:38:13 17 Q Any citations being issued to Walmart?

11:38:15 18 A Not that I recall. Not that I was personally involved
11:38:17 19 in.

11:38:17 20 Q Okay. "Is there a report that shows the pharmacies
11:38:31 21 who do not comply with running OARRS?"

11:38:35 22 A So OARRS -- the way OARRS operates, you can get
11:38:37 23 information out, but there's no report or, like, red flag
11:38:41 24 that would tell you a certain pharmacy is not running OARRS.
11:38:45 25 You would have to go in and check that specific pharmacist

11:38:48 1 or that specific store to see if they're running it.

11:38:52 2 So it tracks -- it tracks the OARRS reports that are
11:38:56 3 run individually by the pharmacists. It does not track how
11:39:02 4 many reports are being run at a given store. So you would
11:39:04 5 have to know where the pharmacist was working on given days
11:39:08 6 in order to, you know, figure that out.

11:39:12 7 **Q** Okay. Moving along here. Two questions here.

11:39:21 8 "Do you think having accrued dispensing data to review
11:39:26 9 volume of C-IIs filled by pharmacies would have helped you
11:39:30 10 in your role of monitoring or auditing pharmacies? Why or
11:39:36 11 why not? And is this information given to someone else at
11:39:41 12 the Board of Pharmacy, and, if so, who?"

11:39:43 13 So let's start with that first one.

11:39:45 14 **A** Sure. I think it definitely would be helpful. It's
11:39:50 15 something that can be accessed through OARRS and is accessed
11:39:52 16 through OARRS. They can run -- you know, they can run the
11:39:58 17 DEA number of a particular store to see how much -- or how
11:40:02 18 many C-IIs are being dispensed by that store.

11:40:05 19 So it is something that is accessible and that is used
11:40:08 20 in investigations. I don't think -- I mean, I guess it
11:40:14 21 could be used on an individual store basis prior to doing an
11:40:19 22 inspection, and it could be -- it could be helpful.

11:40:24 23 But OARRS, again, is only a tool. You know, it's only
11:40:27 24 as good as the information that's being put in, so it would
11:40:32 25 take a much more expansive review of that data to determine

11:40:36 1 if there was a problem or not. It wouldn't -- it could
11:40:39 2 never be achieved in a simple inspection, you know, over a
11:40:43 3 couple hours. It would have to be a much larger review of
11:40:48 4 the dispensing data.

11:40:52 5 And is it given to someone else? I don't believe so.
11:40:55 6 I mean, it's all -- the dispensing data that the pharmacies
11:40:59 7 maintain in-house is also available through OARRS for the
11:41:04 8 controlled substances, so it's there to be looked at if --
11:41:08 9 you know, if there's reason to look at it.

11:41:10 10 But again, you know, if you have data that shows, you
11:41:15 11 know, this pharmacy filled a thousand C-IIs, this pharmacy
11:41:19 12 filled 10, you have to look at -- it doesn't automatically
11:41:22 13 mean that that pharmacy who filled a thousand is bad and the
11:41:26 14 one with 10 is good. You have to look deeper into it and
11:41:28 15 see, you know, the reasons for the prescriptions, who's
11:41:31 16 writing them, what -- you know, what they're for, and that
11:41:33 17 sort of thing.

11:41:34 18 **Q** The next question from this juror: "Are there any
11:41:40 19 licensed pharmacists that are also agents with the Ohio
11:41:43 20 Board of Pharmacy? Do you think being a pharmacist, given
11:41:47 21 their education, would help in this role?"

11:41:50 22 **A** All of our specialists are pharmacists. So they're
11:41:55 23 not necessarily agents. Their title is not agent like
11:41:58 24 myself. They're a specialist. But they do conduct
11:42:03 25 investigations the same way that we do.

11:42:04 1 Q "During inspections, did you review documents or files
11:42:15 2 of prescriptions that were refused to fill? If so, what did
11:42:18 3 you look for? If not, why?"

11:42:21 4 A I don't recall seeing any sort of documentation for
11:42:29 5 refuse to fill. I think that could have potentially been
11:42:31 6 very helpful, but I think in most cases pharmacies got a
11:42:36 7 prescription, did their quick review, and decided, yeah, I'm
11:42:39 8 not filling this, and then said, no, I'm not filling this,
11:42:44 9 or, you know, took another action.

11:42:45 10 I don't think -- because it was never entered in their
11:42:48 11 system and it was never filled, I definitely do think that
11:42:52 12 if that data were maintained, it could have been very
11:42:56 13 helpful in investigations.

11:43:04 14 Q "Has the Ohio Board of Pharmacy ever tasked you or
11:43:08 15 other agents with investigating a pharmacy or pharmacist for
11:43:12 16 refusing to fill prescriptions"?

11:43:14 17 A I have never investigated that sort of case. I know
11:43:21 18 we've had complaints, you know, general public complaints,
11:43:26 19 so-and-so won't fill my prescription, but I don't recall
11:43:30 20 specific investigations related to that.

11:43:35 21 Q Okay. Just a few more here.

11:43:40 22 "During your inspections, did you look for controlled
11:43:49 23 substances that had been brought in to the pharmacies for
11:43:53 24 disposal?"

11:43:54 25 A We didn't look for them because that was not a

11:43:57 1 practice that was allowed. It was discouraged. We
11:44:06 2 understand sometimes that it would happen and they would
11:44:09 3 properly dispose of them, but that was a practice that we
11:44:12 4 didn't allow, so there was no, you know, place that they
11:44:17 5 would keep return medications, or anything like that.

11:44:19 6 So the -- you know, the -- in terms of the drug
11:44:24 7 take-back, you know, mailboxes or disposal boxes that they
11:44:30 8 have now, there is no documentation associated with that.
11:44:34 9 If someone is to go and dispose of something at a pharmacy
11:44:38 10 or police department, there's no documentation associated
11:44:40 11 with that.

11:44:41 12 **Q** When you said that you or the Board of Pharmacy
11:44:43 13 discouraged it or wouldn't allow that, what do you mean?

11:44:45 14 **A** I mean there was -- pharmacies are not permitted --
11:44:52 15 once a drug leaves the pharmacy, like it's dispensed to a
11:44:57 16 patient, they can't bring it back. Like, there's no method
11:45:01 17 in place for a pharmacy to take back medication from a
11:45:05 18 pharmacist.

11:45:06 19 So once it's dispensed and it's in the end user's
11:45:09 20 hands, it's theirs.

11:45:11 21 Now, recently they have started doing the drug
11:45:15 22 take-back stuff, obviously for safety reasons, because you
11:45:19 23 don't want those drugs out on the street. But back when I
11:45:22 24 was conducting inspections, that was not something that was
11:45:26 25 allowed or encouraged.

11:45:28 1 Q So the ability of a pharmacist to have a drug
11:45:31 2 take-back kiosk is relatively new?

11:45:33 3 A Well, it's been a few years, but -- they've had the
11:45:40 4 mail-back pouches that they have on their counters and
11:45:44 5 stuff. Yeah.

11:45:47 6 Q Including at Walgreens, CVS, and Walmart?

11:45:49 7 A I think they all have them now.

11:45:51 8 Q Two more.

11:45:54 9 "At a pharmacy inspection, especially previous to the
11:46:06 10 electronic format, what kind of issues would you consider a
11:46:09 11 fix it versus a write-up/pink slip? If you just told a
11:46:14 12 pharmacy to fix/resolve, how did you know they did?"

11:46:18 13 That's the first question.

11:46:19 14 A So fix it, I guess I would refer to as like a warning,
11:46:22 15 like maybe something like they -- on a phone-in prescription
11:46:29 16 you're required to get the first name and last name of the
11:46:31 17 person calling in the prescription. I may flip through the
11:46:37 18 phone-in prescriptions and see that they just documented,
11:46:39 19 you know, the first name of the person. So I'd say, hey,
11:46:42 20 make sure you get the first and last name.

11:46:46 21 A write-up or pink slip would be something more
11:46:50 22 serious, like if there was an error that occurred. Or if
11:46:55 23 they're not properly keeping track of the files, you know,
11:47:01 24 it's all in disarray, like there's a big box where all the
11:47:04 25 prescriptions are not filed properly.

11:47:07 1 Or we had an issue where they would keep stuff in the
11:47:09 2 attic. You know, they would keep all their files up in the
11:47:12 3 attic, and anybody had access to it. Well, that's a
11:47:19 4 problem. It needs to be in a controlled environment.

11:47:21 5 There's any number of -- I mean, pink slips, any times
11:47:24 6 there's an error in dispensing, it would generally result in
11:47:27 7 a written warning or a pink slip.

11:47:31 8 If there were multiple issues, they may have been
11:47:34 9 minor issues, but if there were numerous issues, then that
11:47:37 10 could result in a pink slip.

11:47:39 11 There's a list -- we had a list, and I don't recall
11:47:43 12 them all off the top of my head, of mandatory pink slip
11:47:49 13 violations, like if the keys are in the possession of
11:47:51 14 someone other than the pharmacist.

11:47:54 15 Like only the pharmacist can possess the keys and open
11:47:56 16 the pharmacy. So if the pharmacists say, you know, I wanted
11:48:02 17 to sleep in and said, okay, we don't get any customers from
11:48:05 18 9 to 10, here, technician, you go and open the pharmacy, and
11:48:08 19 I'll see you there at 10, that would be a written warning.
11:48:10 20 That would be more of a major violation.

11:48:13 21 I mean, I could go on, but I think you get the idea.

11:48:19 22 **Q** Okay. "Were all or most of your investigations based
11:48:25 23 on tips or were there other ways investigations began? If
11:48:29 24 other ways, please explain."

11:48:31 25 **A** I would say, yes, the majority were based on tips.

11:48:36 1 Both while I was working at Lake County Narcotics Agency and
11:48:40 2 Board of Pharmacy, the majority of -- well, let me back that
11:48:44 3 up.

11:48:45 4 With Lake County Narcotics Agency, for sure the
11:48:47 5 majority were based on tips.

11:48:52 6 With the Board of Pharmacy, I would say -- I would say
11:48:55 7 the majority are based on tips, but not as many as at Lake
11:49:00 8 County Narcotics Agency, but still the majority are based on
11:49:03 9 a pharmacist or the general public or a prescriber calling
11:49:05 10 in and filing a complaint.

11:49:09 11 **Q** Okay. This is the last set of questions.

11:49:15 12 "How often would you interact with pharmacists at
11:49:19 13 LCNA"?

11:49:19 14 **A** Multiple times per week. Because, again, that's the
11:49:22 15 only thing I did was the pharmacy diversion investigations,
11:49:25 16 so that's -- five days a week that's all I was working on,
11:49:29 17 so it was most days of the week I would have interactions.

11:49:32 18 **Q** "Where would the majority of the interactions be when
11:49:38 19 you were at LCNA?"

11:49:41 20 **A** LCNA was always Lake County because that was my
11:49:44 21 jurisdiction, with Lake County Narcotics Agency.

11:49:48 22 **Q** Okay. "What pharmacies had the highest investigations
11:49:52 23 when you were" -- I take it "when you were a Board agent,"
11:49:55 24 so when you moved to the Board of Pharmacy, "and in what
11:50:00 25 counties," if you know?

11:50:01 1 **A** Boy, that's -- I can't answer that because I don't --
11:50:05 2 it varies throughout the state because there's areas where
11:50:08 3 there's, you know, tons of mom and pop stores and there's
11:50:13 4 more retail.

11:50:13 5 In my area in northeast Ohio there's -- the vast
11:50:19 6 majority are retail pharmacies. In southern Ohio there's a
11:50:23 7 lot of, you know, mom and pop pharmacies. So I couldn't say
11:50:28 8 which pharmacies had the largest number of investigations
11:50:32 9 because I don't know.

11:50:34 10 And in what counties? Again, I only know what I
11:50:39 11 worked on in my territory. I don't know how many
11:50:42 12 investigations folks had in other areas of the state.

11:50:44 13 **Q** Okay. "How often would these pain management
11:50:49 14 facilities be either inspected or investigated"?

11:50:56 15 **A** Yearly. Once they were licensed as pain management
11:50:58 16 clinics as of 2011, we would inspect them annually.

11:51:02 17 **Q** Last question. "When filling out the electronic form,
11:51:06 18 were you then required to answer all of the questions versus
11:51:10 19 when it was being done manually?"

11:51:13 20 **A** No, there were some identified as mandatory. Like you
11:51:19 21 couldn't close the inspection without answering those, but
11:51:22 22 they weren't -- it wasn't a hundred percent of the
11:51:25 23 questions. It was only a few. A small percentage were
11:51:31 24 required. But then it was up to the agent to ask the
11:51:33 25 questions that they, you know, felt were necessary in that

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11:51:38 1 given inspection.

11:51:41 2 MR. SWANSON: Agent Edwards, thank you for
11:51:42 3 answering my questions. I don't have anything more for you
11:51:45 4 at this time. Some of my colleagues may.

11:51:46 5 THE WITNESS: Okay.

11:51:47 6 THE COURT: Thank you, Mr. Swanson.

11:51:50 7 MR. DELINSKY: Your Honor, I do have some
11:51:52 8 questions, but I can do it before or after lunch.

11:51:54 9 THE COURT: Why don't we go a few more
11:51:58 10 minutes. Maybe if you can conclude yours, then we'll break
11:52:00 11 for lunch, or if Ms. Fumerton only has a couple, whatever --

11:52:09 12 MR. DELINSKY: All right, Your Honor. So I
11:52:11 13 think Ms. Fumerton will go, then we can break.

11:52:13 14 THE COURT: That's fine. Okay.

11:52:19 15 - - - - -

11:52:19 16 RECROSS-EXAMINATION

11:52:20 17 BY MS. FUMERTON:

11:52:20 18 **Q** Hi, Agent Edwards. I just have a couple quick
11:52:26 19 questions for you.

11:52:26 20 Do you still have that document; for the record, it's
11:52:29 21 P-04553. That's the search warrant that Mr. Weinberger had
11:52:34 22 given to you.

11:52:34 23 **A** Yes.

11:52:34 24 **Q** If you could turn to page 12, and I'm going to ask you
11:52:40 25 some questions about the paragraph that's at the top of page

11:52:43 1 12 to see -- I just want it there in case it refreshes your
11:52:47 2 recollection.

11:52:47 3 Do you see where it says "prior to meeting"?

11:52:50 4 **A** Yes.

11:52:50 5 **Q** Okay. As part of the investigation into Dr. Franklin,
11:52:55 6 do you recall that Walmart pharmacists had filed many
11:53:00 7 complaints with the local police and Ohio Board of Pharmacy
11:53:03 8 about Dr. Franklin?

11:53:06 9 **A** I do recall there being multiple complaints, yes.

11:53:08 10 **Q** Do you recall that Walmart pharmacists also had
11:53:12 11 refused to dispense medication for the majority of patients
11:53:16 12 issued prescriptions by Dr. Franklin?

11:53:18 13 **A** I see that here, yes.

11:53:19 14 **Q** I just have a quick follow-up question about the jury
11:53:25 15 questions.

11:53:26 16 MS. FUMERTON: Where did those go?

11:53:32 17 Mr. Swanson, did you grab them or are they back?

11:53:43 18 Thank you, Mr. Swanson.

11:53:56 19 **Q** Do you recall this question? "Has the Ohio Board of
11:54:01 20 Pharmacy ever tasked you or other agents with investigating
11:54:03 21 a pharmacy or pharmacist for refusing to fill
11:54:05 22 prescriptions?"

11:54:06 23 **A** Yes.

11:54:06 24 **Q** And I want to show you a document that's been marked
11:54:17 25 WMT-MDL-01402. And this is an inspection report. And in

11:54:23 1 full disclosure, this is not one that you did.

11:54:24 2 But do you recognize this generally as a drug
11:54:27 3 inspection report?

11:54:27 4 **A** Yes.

11:54:28 5 **Q** And do you recognize that as Mr. Pavlich's signature?

11:54:31 6 **A** Yes.

11:54:32 7 MR. WEINBERGER: Your Honor, we don't have a
11:54:33 8 copy, and this is a document that's not his.

11:54:36 9 MS. FUMERTON: Well, Your Honor, this is in
11:54:38 10 direct response to a question from the jury questionnaire.

11:54:43 11 MR. LANIER: Do you have a copy for us?

11:54:45 12 MS. FUMERTON: I do not. It came up with the
11:54:46 13 jury questionnaire.

11:54:47 14 Actually, you know what, I did, I disclosed it the
11:54:49 15 other day. You have a copy.

11:54:53 16 MR. LANIER: You know the rules.

11:54:55 17 MS. FUMERTON: We did disclose it the other
11:54:57 18 night.

11:54:57 19 THE COURT: Let me see the document. I don't
11:54:58 20 know what you're all --

11:54:59 21 MS. FUMERTON: Your Honor, let me ask it this
11:55:01 22 way.

11:55:02 23 BY MS. FUMERTON:

11:55:02 24 **Q** Are you aware that sometimes doctors would file
11:55:04 25 complaints with the Ohio Board of Pharmacy regarding

11:55:08 1 pharmacists refusing to fill prescriptions?

11:55:11 2 MR. WEINBERGER: Objection.

11:55:12 3 THE COURT: Hold it.

11:55:19 4 MS. FUMERTON: If Mr. Lanier and
11:55:20 5 Mr. Weinberger are looking for the relevant section, they
11:55:22 6 can turn to page 3.

11:56:15 7 (Pause in proceedings.)

11:56:16 8 THE COURT: I'm going to sustain the
11:56:17 9 objection.

11:56:18 10 MR. LANIER: We may withdraw it.

11:56:22 11 THE COURT: Well, I already sustained it,
11:56:24 12 so you can ask it if you want.

11:56:26 13 BY MS. FUMERTON:

11:56:26 14 **Q** My question is this: Do you recall whether or not any
11:56:29 15 doctors would file complaints with the Ohio Board of
11:56:33 16 Pharmacy for pharmacists refusing --

11:56:35 17 **A** I don't recall formal complaints, but I do remember
11:56:37 18 doctors being upset when pharmacies refused to fill their
11:56:40 19 prescriptions.

11:56:41 20 MS. FUMERTON: Can I show the witness the
11:56:42 21 document to see if this refreshes his recollection, Your
11:56:44 22 Honor?

11:56:45 23 THE COURT: Well, he already answered the
11:56:47 24 question.

11:56:47 25 MS. FUMERTON: Well, I'm going to ask him

11:56:50 1 about a specific --

11:56:51 2 **Q** Let me ask you this: If a complaint, formal or
11:56:55 3 otherwise, was made about a particular pharmacist refusing
11:56:59 4 to fill a prescription, would the Ohio Board of Pharmacy
11:57:02 5 inspectors sometimes look at that particular incidence when
11:57:07 6 reviewing prescriptions?

11:57:08 7 **A** Sure.

11:57:08 8 **Q** And would they make a determination of whether or not
11:57:10 9 that prescription was -- whether that pharmacist was acting
11:57:15 10 appropriately?

11:57:16 11 **A** Well, the standard way that we would handle a
11:57:20 12 situation like that would be a pharmacist has to use their
11:57:27 13 professional judgment to fill or not fill a prescription.
11:57:29 14 And just because the doctor's upset, you know, we wouldn't
11:57:32 15 go and look at it and make a big deal out of it. We would
11:57:36 16 just say, look, a pharmacist can fill or not fill, whatever
11:57:38 17 they want, based on their professional judgment.

11:57:41 18 So, you know -- we wouldn't open a formal complaint
11:57:46 19 based on a doctor saying that. I mean, we potentially could
11:57:51 20 based on the circumstances, but generally speaking, we would
11:57:55 21 advise them that the pharmacists have, you know, their
11:58:00 22 discretion to use their professional judgment.

11:58:02 23 MS. FUMERTON: Thank you. That's all my
11:58:03 24 questions.

11:58:03 25 THE WITNESS: Okay.

11:58:07 1 THE COURT: Okay. Ladies and gentlemen, we
11:58:09 2 will break for lunch.

11:58:14 3 The usual admonitions apply. Have a good lunch. And
11:58:17 4 we'll pick up at 1:00 with the balance of Mr. Edwards'
11:58:19 5 testimony.

11:58:51 6 (A luncheon recess was taken at 11:58 a.m.)

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Edwards - (Recross by Delinsky)

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01:03:06 1 A F T E R N O O N S E S S I O N

01:05:06 2 - - - - -

01:05:06 3 (Jury present in open court at 1:05 p.m.)

01:05:31 4 THE COURT: Please be seated. I hope everyone
01:05:33 5 had a good lunch.

01:05:34 6 Mr. Edwards, you are still under oath.

01:05:38 7 And Mr. Delinsky, you may proceed, please.

01:05:40 8 MR. DELINSKY: I hope you had a good lunch,
01:05:42 9 Agent Edwards.

01:05:44 10 THE WITNESS: Yes, thank you.

01:05:47 11 - - - - -

01:05:48 12 RECROSS-EXAMINATION

01:05:48 13 BY MR. DELINSKY:

01:05:49 14 **Q** Let's begin with the investigation of Overholt's
01:05:52 15 Pharmacy and Dr. Franklin, just very briefly. Okay?

01:05:54 16 **A** Yes.

01:05:55 17 **Q** Overholt's Pharmacy and the Overholt's pharmacists who
01:05:59 18 worked in the pharmacies were the subject of an action by
01:06:04 19 the State of Ohio, correct?

01:06:05 20 **A** Correct.

01:06:05 21 **Q** And I believe that several of the pharmacists in that
01:06:07 22 pharmacy were criminally prosecuted?

01:06:09 23 **A** I believe so.

01:06:10 24 **Q** I believe so.

01:06:14 25 The state of Ohio, either the Board of Pharmacy or law

01:06:16 1 enforcement or prosecutors, took no action against any CVS
01:06:19 2 pharmacy or any CVS pharmacist in connection with
01:06:25 3 Dr. Franklin's scripts, correct?

01:06:27 4 **A** Right.

01:06:27 5 **Q** And scripts, I'm sorry for the shorthand, that means
01:06:30 6 prescriptions, right?

01:06:31 7 **A** Right.

01:06:36 8 **Q** I believe you already testified that Dr. Franklin, to
01:06:38 9 the best of your knowledge, had legitimate patients as well,
01:06:40 10 correct?

01:06:41 11 **A** Yes, I believe so.

01:06:41 12 **Q** Okay. And it's fair to say that you can have doctors
01:06:50 13 who have illegitimate portions of their practice and very
01:06:52 14 legitimate portions of their practice at the same time,
01:06:54 15 correct?

01:06:55 16 **A** Correct.

01:06:55 17 **Q** And neither you nor your fellow agents in the Board of
01:07:00 18 Pharmacy advise pharmacists not to as a blanket matter
01:07:06 19 refuse to fill prescriptions for doctors that the Board of
01:07:11 20 Pharmacy is inspecting, correct?

01:07:12 21 **A** We don't tell them --

01:07:21 22 MR. WEINBERGER: Objection.

01:07:23 23 THE COURT: Yes, sustained.

01:07:30 24 **Q** During the Franklin investigation, you didn't advise
01:07:33 25 any pharmacists to stop filling Dr. Franklin's

01:07:38 1 prescriptions, correct?

01:07:38 2 **A** Correct.

01:07:39 3 **Q** And why not?

01:07:39 4 **A** Because -- I think I went over this yesterday, but any
01:07:42 5 investigation, not just Dr. Franklin, any doctor
01:07:45 6 investigation, you know, we -- if a pharmacist asks us, I've
01:07:50 7 got a prescription from so-and-so doctor, what should I do,
01:07:53 8 and our standard reply is use your professional judgment.
01:07:57 9 If they are still licensed, you know, if they still carry a
01:08:00 10 valid State Medical Board of Ohio license to practice and
01:08:05 11 they still have their DEA number, then they're still
01:08:09 12 permitted to practice. So use your professional judgment on
01:08:11 13 each individual prescription that you receive.

01:08:13 14 **Q** And in that regard, the Board of Pharmacy did not
01:08:20 15 advise -- does not advise pharmacists, does not identify for
01:08:25 16 pharmacists the doctors who they are investigating, correct?

01:08:28 17 **A** Correct.

01:08:28 18 **Q** And why not?

01:08:29 19 **A** Well, because it could jeopardize the investigation,
01:08:33 20 just like we don't tell, you know, the public or other
01:08:36 21 doctors or anybody. You know, we conduct our investigation
01:08:40 22 and it's a need-to-know, just like any law enforcement
01:08:43 23 investigation.

01:08:43 24 **Q** I believe Mr. Weinberger asked you about the number of
01:08:50 25 prescriptions for Dr. Franklin that CVS filled.

01:08:53 1 Do you recall that?

01:08:54 2 **A** I recall that, yeah.

01:08:55 3 **Q** Those prescriptions were spread over all the CVS
01:09:00 4 pharmacies in Ohio, correct?

01:09:02 5 **A** Right, yes.

01:09:03 6 **Q** And there are many, many CVS pharmacies in Ohio?

01:09:06 7 **A** Correct.

01:09:06 8 **Q** There was only one Overholt's, correct?

01:09:10 9 **A** Correct.

01:09:11 10 **Q** And you have no reason to believe that any of the
01:09:13 11 prescriptions filled by CVS were illegitimate, correct?

01:09:16 12 **A** I don't have any reason to believe or not believe. I
01:09:19 13 don't know.

01:09:27 14 **Q** Do you recall the PowerPoint deck that Mr. Weinberger
01:09:31 15 showed you that involved a presentation you gave?

01:09:33 16 **A** Yes.

01:09:34 17 **Q** Okay. Let me just put the front page on the ELMO.

01:09:42 18 And I just want to go through a few additional pages
01:09:45 19 here.

01:09:45 20 Number one, who was this presentation to? I may have
01:09:49 21 missed that.

01:09:50 22 **A** Law enforcement. It was geared towards law
01:09:52 23 enforcement.

01:09:52 24 **Q** Okay. So this wasn't given to pharmacists?

01:09:54 25 **A** No.

01:09:54 1 Q Okay. And when you say law enforcement, who does that
01:09:57 2 encompass?

01:09:58 3 A That encompasses any law enforcement agent in the
01:10:03 4 state. Typically, something like this we would advertise to
01:10:07 5 the local drug task forces and, you know, anyone they may
01:10:12 6 know or anyone who has a potential or has interest in doing
01:10:16 7 prescription drug investigations.

01:10:17 8 Q Okay. Fair enough.

01:10:18 9 I'm going to show you one page of this. I think it's
01:10:36 10 page 28.

01:10:37 11 A Mm-hmm.

01:10:38 12 Q Okay. Do you see that?

01:10:41 13 A Yup.

01:10:41 14 Q And this indicates that -- wait, do I have the wrong
01:10:47 15 page? Well, yes, we'll go in sequence.

01:10:50 16 This was when OARRS started. And as this indicates,
01:10:56 17 OARRS would be collecting the data from the pharmacies,
01:10:58 18 correct?

01:10:58 19 A Correct.

01:10:59 20 Q Okay. And then if we go to what I believe is the next
01:11:01 21 page, for the record 27, it states that all pharmacies and
01:11:11 22 prescribers who personally furnish medication must submit
01:11:17 23 controlled substance dispensing data to OARRS?

01:11:20 24 A Correct.

01:11:21 25 Q And does that mean that the pharmacies have to provide

01:11:25 1 all their dispensing data to the Board of Pharmacy?

01:11:27 2 **A** Yes.

01:11:28 3 **Q** Okay. And below -- and I think you may have testified
01:11:31 4 about this already, but this puts it in writing. The
01:11:35 5 pharmacies have to provide that information, at least at
01:11:39 6 this point in time in 2014, at least on a daily basis?

01:11:45 7 **A** Yes.

01:11:45 8 **Q** So the Ohio Board of Pharmacy is getting dispensing
01:11:48 9 data from the pharmacies on a close to realtime basis?

01:11:51 10 **A** Correct.

01:11:52 11 **Q** All right. I want to show you page 35 of the
01:12:12 12 presentation, okay?

01:12:14 13 This is about accessing OARRS; am I right?

01:12:18 14 **A** Yes.

01:12:18 15 **Q** And it says "law enforcement."

01:12:19 16 Can law enforcement, in addition to Board of Pharmacy
01:12:23 17 itself, access OARRS?

01:12:26 18 **A** Yes.

01:12:26 19 **Q** Who in law enforcement?

01:12:27 20 **A** Anyone who has an account. Police officers,
01:12:33 21 detectives, even -- I don't know if this was the case in
01:12:37 22 2014, but corrections officers and probation officers as
01:12:42 23 well.

01:12:42 24 **Q** So am I right that law enforcement officials, law
01:12:45 25 enforcement officers, and agents from throughout the state

01:12:50 1 of Ohio have the ability to access OARRS?

01:12:51 2 **A** Yes.

01:12:51 3 **Q** Okay. So it's not just pharmacists and the Board of
01:12:58 4 Pharmacy who can access it?

01:13:00 5 **A** Correct. The difference is a law enforcement request
01:13:02 6 has to be approved by a supervisor, whereas if I run an
01:13:07 7 OARRS report, it automatically comes back to me. Or if a
01:13:10 8 pharmacist runs an OARRS report, it's instantaneous.

01:13:14 9 A law enforcement request depends on their supervisor
01:13:17 10 approving it, so it's not -- it's not as instantaneous as
01:13:22 11 when I would run it.

01:13:23 12 **Q** How long can that approval process take? Can it be a
01:13:26 13 split second or maybe --

01:13:27 14 **A** I mean, as long as it takes their supervisor to view
01:13:30 15 the request and approve it, so it can be instant or take
01:13:37 16 days.

01:13:37 17 **Q** Okay. Just a few more pages that I want to go
01:13:43 18 through.

01:13:43 19 Well, I'm going to show you this page and I'm going to
01:13:55 20 flip it.

01:13:55 21 **A** Okay.

01:13:56 22 **Q** SPIDR, do people call that spider?

01:13:59 23 **A** Yes.

01:14:00 24 **Q** I'm going to flip it, and just for the record, that
01:14:02 25 was page 102. Now we're at page 101.

01:14:05 1 Does SPIDR stand for Shared Prescription Investigation
01:14:14 2 Deconfliction Resource?

01:14:14 3 **A** Yes.

01:14:14 4 **Q** What is SPIDR?

01:14:15 5 **A** It's a deconfliction tool that we established as the
01:14:20 6 Board of Pharmacy, established to I guess get a better
01:14:24 7 handle on who was working prescription drug cases around the
01:14:27 8 state and try to deconflict with other agencies and, you
01:14:31 9 know, collaborate, and then also make sure that you didn't,
01:14:34 10 you know, step on anybody's toes because you're working the
01:14:36 11 same investigation.

01:14:37 12 **Q** So for lack of a better word, is SPIDR a database?

01:14:42 13 **A** Yes.

01:14:42 14 **Q** And it's a database that's shared among law
01:14:46 15 enforcement in Ohio?

01:14:47 16 **A** Yes, if law enforcement signs up for it and the Board
01:14:50 17 of Pharmacy, correct.

01:14:50 18 **Q** Law enforcement and the Board of Pharmacy?

01:14:52 19 **A** Yes.

01:14:52 20 **Q** Okay. And it's a database that contains information
01:14:58 21 about investigations involving prescription drugs?

01:15:02 22 **A** Yes, generally speaking, yes.

01:15:05 23 **Q** Okay. And it's so that multiple law enforcement
01:15:08 24 agencies and the Board of Pharmacy can coordinate with one
01:15:12 25 another?

01:15:12 1 **A** Yes.

01:15:12 2 **Q** Okay. And am I right that, like the 640 reports
01:15:18 3 prepared by the Board of Pharmacy, this SPIDR database is
01:15:24 4 not a resource that's shared with pharmacists or pharmacies?

01:15:29 5 **A** Correct, correct.

01:15:30 6 **Q** It's for law enforcement only?

01:15:31 7 **A** Yes.

01:15:31 8 **Q** I believe you testified to this, but I just want to
01:15:39 9 double-check.

01:15:41 10 Pharmacists can and are required in certain
01:15:45 11 circumstances to check OARRS, correct?

01:15:47 12 **A** Correct.

01:15:47 13 **Q** But doctors are too?

01:15:49 14 **A** Correct.

01:15:50 15 **Q** Could you talk about when doctors are required to
01:15:53 16 check OARRS?

01:15:54 17 **A** Doctors are -- I don't have the list in front of me,
01:15:58 18 but they should check OARRS with every new prescription,
01:16:04 19 controlled substance prescription for a new patient, or
01:16:06 20 every 90 days we -- and I could be -- it changes
01:16:13 21 periodically, but I know we encourage them to check it every
01:16:17 22 time a patient comes in. I don't believe they're required
01:16:19 23 to check it upon every visit. I think it's still 90 days.

01:16:25 24 **Q** Okay. And doctors have the same access to OARRS;
01:16:29 25 different requirements, but the same access --

01:16:31 1 **A** Yes.

01:16:31 2 **Q** -- that a pharmacist would have --

01:16:34 3 **A** Correct.

01:16:34 4 **Q** -- correct?

01:16:36 5 Okay. By the way, a corporate home office, if you
01:16:39 6 operate a chain pharmacy, the corporate office doesn't have
01:16:41 7 access to OARRS, correct?

01:16:42 8 **A** No, it's individual accounts. So it would be an
01:16:46 9 individual pharmacist upon filling an individual
01:16:49 10 prescription would run the OARRS report to help determine if
01:16:52 11 they should fill that prescription or not.

01:16:54 12 **Q** Company employees out of state who are not licensed
01:16:59 13 pharmacists in Ohio can't log on to OARRS?

01:17:03 14 **A** Well, I don't know if there's, like, central fill
01:17:06 15 operations where maybe, you know, they're filling at another
01:17:11 16 location outside the state. I know that occurs. I don't
01:17:13 17 know if the checking of OARRS is done that way, but
01:17:17 18 out-of-state people can have accounts and can check OARRS,
01:17:21 19 but I don't know how it works at the individual pharmacies.

01:17:24 20 **Q** And it's in that central fill context generally?

01:17:27 21 **A** Right.

01:17:28 22 **Q** All right. Take-back kiosks, we've talked a fair
01:17:32 23 amount about those. I just want to make sure I understand
01:17:33 24 your testimony and the jury does as well.

01:17:36 25 There was a change in the law at some point that

01:17:41 1 allowed pharmacies to install the take-back kiosks, right?

01:17:46 2 **A** Right, yes.

01:17:47 3 **Q** Before that point in time, am I right that pharmacies
01:17:50 4 were not allowed to have those kiosks?

01:17:54 5 **A** Correct.

01:17:54 6 **Q** Okay. 2016 or so?

01:17:57 7 **A** I don't know. That's not my area. I'm not sure.

01:18:02 8 **Q** Okay. Can you ballpark it, or really --

01:18:05 9 **A** No, really, I'm not sure.

01:18:07 10 **Q** Fair enough.

01:18:07 11 If you didn't write it down, you didn't do it,
01:18:13 12 that's -- I believe you testified to that in connection with
01:18:16 13 the documentation of the resolution of red flags.

01:18:20 14 **A** Mm-hmm.

01:18:20 15 **Q** Right?

01:18:21 16 **A** Mm-hmm. Yes.

01:18:22 17 **Q** Sorry.

01:18:23 18 **A** Yes. No, it's okay.

01:18:24 19 **Q** Now, a pharmacist could do the work -- let me step
01:18:34 20 back.

01:18:35 21 First of all, it's a good practice to write down your
01:18:39 22 work when you're resolving a red flag, right?

01:18:41 23 **A** Yes, correct.

01:18:42 24 **Q** Not necessarily required by law. Good practice?

01:18:45 25 **A** Correct.

01:18:45 1 Q Okay. Now, a pharmacist could do the hard work and
01:18:51 2 the careful work to resolve a red flag but not write down
01:18:58 3 what she or he did, right?

01:18:59 4 A Correct.

01:19:00 5 Q Okay. That doesn't mean she or he didn't do it,
01:19:03 6 correct?

01:19:03 7 A Correct.

01:19:03 8 Q Just means she didn't write it down?

01:19:05 9 A Right.

01:19:05 10 Q And that happens?

01:19:07 11 A Sure.

01:19:08 12 Q It happens with a lot of the old-timer pharmacists,
01:19:10 13 right?

01:19:11 14 A It happens with all of them.

01:19:12 15 Q All of them.

01:19:13 16 And that's sort of why you would talk about it,
01:19:15 17 because, you know, pharmacists, some are really good at it,
01:19:19 18 some aren't good at it?

01:19:20 19 A Right.

01:19:21 20 Q But those who aren't good at it, it doesn't
01:19:23 21 necessarily mean that they aren't good at resolving the red
01:19:27 22 flags?

01:19:27 23 A Correct.

01:19:28 24 Q Okay. The Board of Pharmacy inspections, I believe
01:19:37 25 you testified that, you know, obviously correctly, that

01:19:42 1 they're a snapshot at that point in time of how the pharmacy
01:19:46 2 is operating; correct?

01:19:47 3 **A** Correct, yes.

01:19:47 4 **Q** But the Board of Pharmacy does have all the data on
01:19:53 5 the prescriptions filled by these pharmacies, correct?

01:19:55 6 **A** The controlled substances, yes.

01:19:57 7 **Q** Second time you had to correct me on that. Thank you.

01:19:59 8 And as we discussed, that data, they get it in very
01:20:08 9 close to realtime, correct?

01:20:09 10 **A** Right.

01:20:09 11 **Q** So while the inspections are a snapshot, the Board of
01:20:14 12 Pharmacy itself has much broader everyday information about
01:20:17 13 the operations of Ohio pharmacies?

01:20:20 14 **A** They have more data on the prescriptions, yes.

01:20:23 15 **Q** Okay. And they have -- they have data for the last
01:20:26 16 month, for the last year, the last five years?

01:20:30 17 **A** Yes.

01:20:30 18 **Q** Okay. And the Board of Pharmacy runs analytics on the
01:20:36 19 data?

01:20:36 20 **A** Yes.

01:20:37 21 **Q** And has the ability to run additional analytics on the
01:20:40 22 data?

01:20:40 23 **A** Yes.

01:20:40 24 **Q** And the Board of Pharmacy produces the reports that
01:20:43 25 are used by the Board of Pharmacy, correct?

01:20:44 1 **A** Yes.

01:20:44 2 **Q** Okay. We're almost done. Just a few more questions.

01:20:57 3 Your presentation included, you know, the figures
01:21:03 4 about prescription opioid suffering and abuse, misuse,
01:21:14 5 overdoses.

01:21:15 6 Do you recall that?

01:21:16 7 **A** Yes.

01:21:16 8 **Q** Okay. I think in part, although I don't think you
01:21:23 9 testified about this in response to every slide -- and look,
01:21:27 10 it's fair to say those are upsetting to you, correct?

01:21:30 11 **A** Sure.

01:21:30 12 **Q** They're upsetting to everybody?

01:21:31 13 **A** Right.

01:21:32 14 **Q** They're awful?

01:21:34 15 **A** Yes.

01:21:34 16 **Q** I believe in testifying about one of them, you talked
01:21:42 17 about misuse, that a significant portion of the tragedy is a
01:21:48 18 result of the misuse of prescription opioids; correct?

01:21:52 19 **A** Yes.

01:21:53 20 **Q** Okay. With that being said, would you agree that the
01:22:03 21 vast, vast majority of doctors are writing controlled
01:22:09 22 substances prescriptions legitimately?

01:22:11 23 **A** The majority, yes.

01:22:12 24 **Q** Sort of a small fraction --

01:22:15 25 **A** Yes.

01:22:15 1 Q -- who are engaging in illegality?

01:22:20 2 A Yes.

01:22:21 3 Q And likewise, you would agree that the vast majority
01:22:25 4 of pharmacists are executing their responsibilities
01:22:28 5 faithfully and as best they can?

01:22:29 6 A Yes.

01:22:30 7 Q Okay.

01:22:30 8 MR. DELINSKY: Thank you very much, Agent
01:22:32 9 Edwards.

01:22:32 10 THE WITNESS: You're welcome.

01:22:43 11 THE COURT: Mr. Weinberger.

01:22:49 12 - - - - -

01:22:51 13 RECROSS-EXAMINATION

01:22:51 14 BY MR. WEINBERGER:

01:22:52 15 Q Mr. Edwards, even a small percentage of the doctors,
01:22:53 16 if they're bad, and if the pharmacists do not exercise
01:22:58 17 corresponding responsibility, can cause a lot of harm to
01:23:02 18 individuals in a community, right?

01:23:03 19 A Yes.

01:23:03 20 Q And with respect to the OARRS data that's provided to
01:23:10 21 the Board of Pharmacy, is somebody reviewing that data daily
01:23:15 22 when it comes in?

01:23:16 23 A No.

01:23:16 24 Q Is somebody reviewing that data regularly every month?

01:23:24 25 A I don't -- I mean, I review the doctor shopper report

01:23:28 1 every month because of my role in the Early Intervention
01:23:31 2 program, but in terms of reviewing all the data that comes
01:23:34 3 in, no, there's -- I mean, there would be no way to review
01:23:38 4 every single piece of data that comes in.

01:23:40 5 **Q** Right. It's expected, if you're a registrant, to
01:23:45 6 follow the law, right?

01:23:46 7 **A** Correct.

01:23:46 8 **Q** It's expected that if you're a pharmacy and you're a
01:23:50 9 registrant, you have to follow the law with respect to the
01:23:54 10 identification and resolution of red flags, right?

01:23:57 11 **A** Sure.

01:23:57 12 **Q** And you have to do that analysis with respect to every
01:24:03 13 controlled substance prescription that is presented to you,
01:24:06 14 right?

01:24:06 15 **A** Correct, yes.

01:24:06 16 **Q** And the home office may not be able -- of CVS or
01:24:14 17 Walgreens, may not be able to register with OARRS, but they
01:24:18 18 have every ability to train their pharmacists and to
01:24:23 19 encourage their pharmacists to register with OARRS because
01:24:27 20 it's such a good tool, right?

01:24:28 21 **A** Yes.

01:24:31 22 **Q** And if a corporate office takes four or five years
01:24:41 23 after a PDMP comes onboard to issue a policy encouraging,
01:24:49 24 indeed mandating, that the pharmacists register for OARRS,
01:24:55 25 that would be a problem, right?

01:24:57 1 **A** Potentially it could be a problem.

01:25:03 2 **Q** Now, one final question or set of questions on the
01:25:05 3 Dr. Franklin investigation, sir.

01:25:07 4 Part of the issue with Dr. Franklin is he had an
01:25:16 5 office in Middlefield in Geauga County, and what was
01:25:21 6 beginning to be noticed by the Board of Pharmacy and others
01:25:24 7 is that his -- that the patients that he was seeing were
01:25:28 8 traveling outside of Geauga County to get their
01:25:32 9 prescriptions filled, right?

01:25:33 10 **A** Correct.

01:25:36 11 **Q** And that includes pharmacies in Trumbull County and in
01:25:39 12 Lake County owned by CVS and Walgreens, right?

01:25:43 13 **A** Correct.

01:25:47 14 MR. WEINBERGER: Thank you.

01:25:48 15 Thank you, Your Honor. That's all I have.

01:25:52 16 THE COURT: Okay, sir, thank you very much.
01:25:54 17 We appreciate your testimony. And you may be excused.

01:25:56 18 THE WITNESS: All right. Thank you.

01:26:07 19 MS. SWIFT: Your Honor, may we bring in our
01:26:09 20 next witness?

01:26:10 21 THE COURT: Yes.

01:26:12 22 MS. SWIFT: Just give us one minute.

01:26:28 23 MS. FUMERTON: Your Honor, could I approach
01:26:30 24 the witness --

01:26:31 25 THE COURT: Sure. You can get the documents

01:26:32 1 back. That's a good idea.

01:27:20 2 (Pause in proceedings.)

01:27:50 3 THE COURT: Okay. You may come forward, sir.

01:27:52 4 MS. SWIFT: Walgreens calls Robert Brunner to
01:27:55 5 the stand.

01:28:16 6 THE COURT: Good afternoon, Mr. Brunner. If
01:28:18 7 you could raise your right hand, please.

01:28:20 8 (Witness sworn.)

01:28:26 9 THE COURT: Thank you. You may remove your
01:28:28 10 mask while testifying, please.

01:28:31 11 Okay, Ms. Swift.

01:28:33 12 MS. SWIFT: May it please the Court.

01:28:35 13 Good afternoon, ladies and gentlemen.

01:28:36 14 I'll give the witness a minute to settle in.

01:28:45 15 You're bouncing around a little bit back there. Are
01:28:48 16 you okay?

01:28:49 17 THE WITNESS: Trying to raise the chair up.
01:28:51 18 That's as high as it goes.

01:28:52 19 THE COURT: We've had a problem raising that
01:28:54 20 chair or lowering it, sir, so I think you have to do the
01:28:56 21 best you can. We apologize.

01:28:41 22 ROBERT BRUNNER

01:28:41 23 - - - - -

01:28:41 24 DIRECT EXAMINATION

01:28:41 25 BY MS. SWIFT:

01:28:59 1 Q Good afternoon, Mr. Brunner.

01:29:00 2 Would you please introduce yourself to the jury.

01:29:02 3 A Good afternoon. My name is Robert Brunner. I'm a

01:29:05 4 vice president with Charles River Associates.

01:29:08 5 Q Mr. Brunner, would you please spell your name for the

01:29:10 6 court reporter.

01:29:11 7 A Yes. Brunner, B-R-U-N-N-E-R.

01:29:14 8 Q Are you offering opinions today on behalf of

01:29:20 9 Walgreens?

01:29:21 10 A Yes, I am.

01:29:21 11 Q In the area of data analysis?

01:29:23 12 A Correct.

01:29:23 13 Q I'm going to focus my questions with you today on

01:29:27 14 three areas. We'll talk about your background and resume,

01:29:31 15 we'll talk about the work you did in this case and how you

01:29:34 16 did it, and then I'm going to ask you about some of the

01:29:36 17 results you reached. Okay?

01:29:38 18 A Excellent.

01:29:38 19 Q All right. So we'll focus first on your resume. I'm

01:29:42 20 going to put it on the screen if I could, and this is going

01:29:45 21 to be Tab 1 of your binder if you want to follow along in

01:29:49 22 the hard copy.

01:29:58 23 Okay, Mr. Brunner, can you see that on the screen?

01:30:01 24 A Yes, I can.

01:30:01 25 Q I'll call out the first paragraph of your resume. And

01:30:08 1 you just said, and it says in the first paragraph here, that
01:30:10 2 you work at Charles River Associates.

01:30:13 3 What is Charles River?

01:30:15 4 **A** It's a multidisciplinary consultancy that provides
01:30:18 5 management consulting, litigation consulting, expert witness
01:30:22 6 services.

01:30:24 7 **Q** And do you principally do litigation work or do you do
01:30:28 8 other work as well?

01:30:30 9 **A** My focus is more on investigations, internal
01:30:34 10 investigations, regulatory investigations, those sorts of
01:30:37 11 things.

01:30:38 12 **Q** Let me back out of this for a second first and lay a
01:30:42 13 little bit better foundation for your resume.

01:30:44 14 Is this in fact your current resume?

01:30:46 15 **A** Yes, it is.

01:30:46 16 **Q** Great.

01:30:47 17 How big is Charles River?

01:30:48 18 **A** It's about a thousand professionals.

01:30:50 19 **Q** And your resume says that at Charles River you're the
01:30:54 20 co-leader of the Risk Investigations and Analytics practice.

01:30:58 21 What does that mean you do day to day?

01:31:00 22 **A** So our practice helps companies respond to internal
01:31:06 23 investigations, things like internal fraud, malfeasance,
01:31:14 24 regulatory inquiries, SEC inquiries, DOJ inquiries, those
01:31:19 25 sorts of things.

01:31:19 1 Q How many people work for you at Charles River?

01:31:21 2 A 45, 50.

01:31:23 3 Q Do you also work with people from other firms aside
01:31:27 4 from Charles River on the cases that you work on?

01:31:30 5 A Yes, I do.

01:31:30 6 Q Do you do that in this case in fact?

01:31:32 7 A Yes.

01:31:32 8 Q Who are the people that you work with in this case?

01:31:35 9 A So I left my prior employer and joined Charles River
01:31:42 10 about two and a half years ago. My prior employer was FTI
01:31:46 11 Consulting, and I've relied on a lot of work from people who
01:31:48 12 I supervised still there at FTI Consulting, my prior
01:31:52 13 employer.

01:31:52 14 Q Explain for the jury what FTI Consulting is.

01:31:55 15 A It's sort of a much bigger-in-scope firm of Charles
01:32:00 16 River, my current employer. They do, in addition to
01:32:02 17 litigation support and expert testimony, they also offer,
01:32:05 18 like, investor relations and corporate recovery,
01:32:10 19 restructuring services, those sorts of things.

01:32:12 20 Q All right. Your resume says that you are based in
01:32:33 21 both Los Angeles and New York.

01:32:36 22 Where do you live?

01:32:37 23 A I live in Southern California.

01:32:39 24 Q Are you from Southern California originally?

01:32:40 25 A For the most part, yes. I was actually born in

01:32:44 1 Buffalo, but I've lived in California for the last 50 years.

01:32:48 2 **Q** Did you say for the last 50 years?

01:32:50 3 **A** Yes.

01:32:51 4 **Q** Oh, wow. Okay.

01:32:52 5 Where did you go to college?

01:32:53 6 **A** University of California San Diego.

01:32:55 7 **Q** What degrees did you -- did you obtain a degree from
01:32:58 8 the University of California?

01:32:58 9 **A** Yes, I did.

01:32:59 10 **Q** What degrees did you obtain?

01:33:00 11 **A** I have a bachelor -- bachelor degrees in
01:33:05 12 mathematics-computer science and in economics.

01:33:06 13 **Q** Do you have any advanced degrees?

01:33:07 14 **A** No.

01:33:08 15 **Q** Did you ever think about getting an advanced degree?

01:33:11 16 **A** I started work on a master's program, and then --
01:33:15 17 shortly after my bachelor's, and then concluded that I
01:33:18 18 needed to go out in the real world and make some money to
01:33:20 19 pay some bills.

01:33:22 20 **Q** I take it you don't view an advanced degree like a
01:33:29 21 Ph.D., that's not necessary for the work that you do?

01:33:33 22 **A** Absolutely not.

01:33:34 23 **Q** Why not?

01:33:34 24 **A** Doing the work I do in the analytics space requires a
01:33:38 25 mastery of the tools and of attention to detail. And those

01:33:41 1 are things that I exhibited in undergraduate school and that
01:33:46 2 I've refined over the course of my 35 years-plus in the
01:33:49 3 field.

01:33:49 4 **Q** Why do you split your time between New York and LA?

01:33:52 5 **A** So I'm a Southern Californian, but the number -- the
01:33:57 6 practice that I'm trying to build that I've just come over a
01:34:00 7 few years ago to start building is based in New York, and a
01:34:03 8 good number of my clients are in New York as well.

01:34:05 9 **Q** All right. Your resume says that you are an expert in
01:34:08 10 the areas of collection and analysis of financial,
01:34:14 11 transactional, and appraisal data.

01:34:16 12 Do I have that right?

01:34:18 13 **A** Yes, you do.

01:34:19 14 **Q** Can you provide an example of the type of data you
01:34:22 15 have looked at in the course of your work?

01:34:24 16 **A** In the course of my work for this case specifically,
01:34:27 17 or broadly?

01:34:29 18 **Q** Or an example from your resume; your choice.

01:34:32 19 **A** It's the quantitative numbers, the numbers in the
01:34:36 20 codes, as opposed to looking at sort of e-mails and
01:34:39 21 free-text stuff that you might do a Google search on, this
01:34:43 22 is the quantum analytics. And so the mathematical -- the
01:34:46 23 fielded information, you might think of it as the cells in a
01:34:49 24 spreadsheet of a super, super-large spreadsheet.

01:34:52 25 **Q** I'll back out of this so the jury can see a little bit

01:34:55 1 more of your resume.

01:34:57 2 After the first three paragraphs or so there's several
01:35:02 3 pages of what you call selected engagements.

01:35:05 4 Do you see that?

01:35:05 5 **A** Yes, I do.

01:35:06 6 **Q** Can you give us a more concrete example of the kind of
01:35:10 7 work that you do with data in one of the cases from your
01:35:13 8 resume?

01:35:16 9 **A** Sure. An example I think everyone can relate to is a
01:35:19 10 case involving Amazon. There was a dispute between Toys "R"
01:35:23 11 Us and Amazon. Amazon was running Toys "R" Us's website for
01:35:28 12 them, and they had a contract dispute about overlapping
01:35:31 13 sales or competitive sales. So we had to do a robust
01:35:36 14 analysis of Amazon's data warehouse, which at the time was
01:35:40 15 one of the largest in the world, to identify what's the
01:35:44 16 population of potential products where there might be
01:35:48 17 overlap, who sold which one, so we had to do intensive
01:35:52 18 investigation of the data warehouse to find answers to those
01:35:55 19 discreet questions.

01:35:55 20 **Q** And I take it both from that answer and the answer you
01:35:58 21 gave a moment ago that most of the time when you're
01:36:00 22 analyzing data it's electronic data, like data on a
01:36:03 23 spreadsheet; that fair?

01:36:04 24 **A** Yes.

01:36:04 25 **Q** Do you sometimes also analyze hard copy data?

01:36:07 1 **A** Yes. When I started my career 35 years ago, a vast
01:36:11 2 majority of business records were still kept in hard copy
01:36:14 3 form, and so oftentimes there had to be a conversion
01:36:18 4 process, or what have you, to take the hard copy stuff and
01:36:20 5 turn it into data.

01:36:22 6 **Q** I apologize. I warned you I was going to do this.
01:36:24 7 I'm going to ask you to slow down a little bit for
01:36:27 8 Mr. Boardman's sake, Mr. Brunner.

01:36:30 9 Did you look at hard copy data in this case?

01:36:32 10 **A** Yes.

01:36:32 11 **Q** What hard copy data did you look at in this case?

01:36:34 12 **A** Hard copy prescriptions that were included with the --
01:36:40 13 or that were associated with the sample of 2000
01:36:43 14 prescriptions.

01:36:44 15 **Q** And we'll talk about that in a little bit more detail
01:36:46 16 later on. I just want to focus on one more paragraph from
01:36:52 17 your resume.

01:36:55 18 I'll call out the third paragraph. Prior to joining
01:37:01 19 Charles River, you were the founder and global leader of the
01:37:03 20 Data and Analytics practice at FTI. I think you've already
01:37:07 21 mentioned that. You've already mentioned that part of your
01:37:11 22 career.

01:37:11 23 Before joining FTI, do I have it right that you were a
01:37:15 24 partner at both KPMG and before that at Arthur Andersen?

01:37:20 25 **A** Yes.

01:37:20 1 Q Were those big accounting firms at the time that also
01:37:24 2 had large consulting practices?

01:37:26 3 A Yes, they were.

01:37:26 4 Q Were you ever involved in any of their audit work?

01:37:30 5 A Negative.

01:37:30 6 Q Have you always focused your practice throughout your
01:37:33 7 career on the kind of data analysis that you did in this
01:37:35 8 case?

01:37:36 9 A Yes.

01:37:36 10 Q What was your first job out of college?

01:37:40 11 A I was the director of Administrative Computing at
01:37:45 12 Scripps Institution of Oceanography.

01:37:48 13 Q What is the Scripps Institution of Oceanography?

01:37:51 14 A It's a leading oceanographic research institute that
01:37:54 15 looks at things like fish life, marine biology, underwater
01:38:02 16 or ocean currents, ocean temperatures, those sorts of
01:38:05 17 things.

01:38:06 18 Q Where is Scripps?

01:38:06 19 A It's in La Jolla, California, which is just north of
01:38:10 20 San Diego.

01:38:10 21 Q And what did you do at the Oceanography Institute?

01:38:13 22 A I was the director of their Administrative Computing.

01:38:16 23 Q Mr. Brunner knows I'm going to make fun of him for
01:38:19 24 this.

01:38:19 25 It sounds like you had the most boring job at a really

01:38:22 1 cool place. Is that a fair statement, in your mind?

01:38:24 2 **A** I can't object to it, but there were some positive
01:38:28 3 aspects to it. My office was, you know, closer to the beach
01:38:30 4 than you are, and the guy in the office next to me was a
01:38:35 5 pioneering scuba diver who virtually invented the sport.

01:38:39 6 **Q** Did he teach you to scuba dive?

01:38:41 7 **A** He did teach me to scuba dive. This was a guy who was
01:38:45 8 scuba diving before scuba equipment even existed, and he
01:38:48 9 used to tell me stories. He had these two massive shark
01:38:51 10 bites on his arm from one of his research endeavors.

01:38:54 11 **Q** Do you still live near the ocean today?

01:38:57 12 **A** I do.

01:38:58 13 **Q** All right. Have we covered all of your jobs since
01:39:00 14 college?

01:39:00 15 **A** Yes.

01:39:00 16 **Q** And you already mentioned that you have a -- you were
01:39:04 17 working with people at FTI on this case. I want to ask you
01:39:08 18 some more questions about that team.

01:39:09 19 How many people are working with you on this case from
01:39:15 20 FTI?

01:39:16 21 **A** I don't know exactly. Probably five to ten.

01:39:17 22 **Q** What kinds of backgrounds does the FTI team have?

01:39:24 23 **A** They have similar to mine. They have backgrounds in
01:39:27 24 business, finance, applied math, economics, those sorts of
01:39:31 25 things.

01:39:31 1 Q What levels of seniority do the folks at FTI have?

01:39:36 2 A Range from young folks sort of fresh out of college to
01:39:40 3 experienced folks with 20-plus years of experience.

01:39:42 4 Q Have you been working with that team the entire time
01:39:45 5 you've worked on this litigation?

01:39:46 6 A Yes.

01:39:47 7 Q Would it have been possible to do the work that you
01:39:49 8 did in this case without their help?

01:39:51 9 A Absolutely not.

01:39:52 10 Q And I skipped a predicate question there.

01:39:55 11 How long have you been working with the folks at FTI
01:39:57 12 on this case?

01:39:58 13 A On this case? I was initially engaged in late
01:40:05 14 spring -- or mid spring of 2019, so just over two years.

01:40:08 15 Q You've been working with your team that whole entire
01:40:10 16 time?

01:40:11 17 A Yes.

01:40:11 18 Q About how much of your time have you spent working on
01:40:17 19 this litigation in the two-plus years that you've been
01:40:20 20 working on it?

01:40:21 21 A 15, 25 percent, somewhere in that range.

01:40:24 22 Q Okay. How much have you billed on this litigation
01:40:27 23 overall in that time?

01:40:28 24 A Including expenses, about \$720,000.

01:40:32 25 Q Is your income at Charles River tied in any way to the

01:40:36 1 amount of money that you bill to Walgreens?

01:40:38 2 **A** No. Those are Charles River billings, not Rob Brunner
01:40:43 3 billings.

01:40:43 4 **Q** Is your income tied in any way to the amount of money
01:40:45 5 that FTI bills for the work they do to support you?

01:40:49 6 **A** Negative.

01:40:49 7 **Q** Do you even know how much FTI has billed on this case?

01:40:52 8 **A** Negative.

01:40:52 9 **Q** Mr. Brunner, do you consider yourself an expert in the
01:40:57 10 field of data analytics?

01:40:59 11 **A** Yes, I am.

01:40:59 12 **Q** Do you have opinions that you have prepared in this
01:41:02 13 case based on that expertise?

01:41:05 14 **A** Yes, I do.

01:41:05 15 **Q** Do you hold those opinions to a reasonable degree of
01:41:08 16 professional certainty?

01:41:08 17 **A** Yes, I do.

01:41:09 18 **Q** Are you prepared to explain those opinions to the jury
01:41:12 19 today?

01:41:12 20 **A** Yes, I am.

01:41:13 21 **Q** All right. Now I'm going to change topics and ask you
01:41:17 22 questions about the work that you did in this case and how
01:41:19 23 you did it, your methods.

01:41:22 24 At a high level, can you describe for the jury what is
01:41:27 25 the work that you did in this case that you're prepared to

01:41:30 1 talk about today? And I'm going to follow along with you,
01:41:34 2 take some notes.

01:41:36 3 **A** There were three basic high-level tasks. One was to
01:41:43 4 intake or to receive and to look at the vast amount of data
01:41:48 5 that was produced by varying parties in this case, to be
01:41:52 6 sure we -- I understood it and what it meant and what it
01:41:55 7 represented so that we could do analysis on it.

01:41:58 8 A second was to --

01:42:00 9 **Q** Let me interrupt you for a second, Mr. Brunner.

01:42:02 10 **A** Yes.

01:42:04 11 MS. SWIFT: Mr. Pitts, may I have the ELMO,
01:42:06 12 please?

01:42:08 13 **Q** I think I heard you say you received and ingested
01:42:13 14 data. Is it a fair summary to say that you analyzed data?

01:42:18 15 **A** Yes.

01:42:18 16 **Q** What else did you do?

01:42:19 17 **A** We looked at Dr. McCann's report and formed
01:42:27 18 perspectives on various of the analyses that he had done.

01:42:29 19 **Q** Is it a fair summary that you responded to Dr. McCann?

01:42:32 20 **A** Yes.

01:42:34 21 **Q** And what else did you do?

01:42:34 22 **A** Lastly, we presented the data in forms that were
01:42:43 23 demonstrative and illustrative to help the jury understand
01:42:47 24 what was included in that data.

01:42:48 25 **Q** Fair to summarize that as present the data?

01:42:53 1 **A** Yes.

01:42:53 2 **Q** And you said you responded to Dr. McCann. Remind the
01:42:56 3 jury who Dr. McCann is, if you would, please?

01:43:00 4 **A** Dr. McCann is the plaintiffs' data expert.

01:43:04 5 **Q** What kind of data did you analyze in this case?

01:43:10 6 **A** At a high level, we looked at both sort of the
01:43:14 7 distribution and the purchases of opioids by the pharmacies
01:43:17 8 and the dispensation or filling of prescriptions on the
01:43:20 9 other side, from the pharmacies down to the consumers.

01:43:25 10 **Q** Were there specific data sets that you looked at and
01:43:28 11 can you identify them by name?

01:43:30 12 **A** Yes. The purchases of opioids by the pharmacies is
01:43:33 13 tracked through a system called ARCOS, which is a DEA system
01:43:37 14 that tracks that data on a national basis. And then the
01:43:43 15 fulfillment of prescriptions and the dispensation is tracked
01:43:46 16 in a system called OARRS, which is provided by the Ohio
01:43:54 17 Board of Pharmacy.

01:43:54 18 **Q** Is there any other data that you looked at for
01:43:58 19 purposes of your opinions in this case?

01:43:59 20 **A** Yes. We also looked at Walgreens-produced
01:44:09 21 distribution data so that -- their equivalent of the
01:44:12 22 OARRS -- of the ARCOS data to confirm that the ARCOS data
01:44:16 23 matched what Walgreens' records showed.

01:44:19 24 **Q** Did you also look at Walgreens' dispensing data?

01:44:23 25 **A** Yes, we did.

01:44:23 1 Q Did I capture all of the data there on my handwritten
01:44:27 2 slide?

01:44:27 3 A Yes, we did.

01:44:29 4 Q What did you do with the ARCOS data and the OARRS
01:44:35 5 data?

01:44:35 6 A I'll start with the ARCOS. The first thing we did was
01:44:40 7 to take it in, to load it into a database to identify any
01:44:47 8 sorts of unusual activity or unusual data outliers; things
01:44:51 9 that, for example, if you had a state code of ZZ or
01:44:54 10 something like that, so things that shouldn't have fit, to
01:44:56 11 identify outliers. And then we compared that to the
01:44:59 12 Walgreens data to help ascertain whether we -- whether we
01:45:03 13 agreed with it, whether it matched up, and whether we saw
01:45:06 14 any aberrations to determine --

01:45:07 15 Q Can I stop you?

01:45:09 16 I apologize for interrupting you, I apologize to
01:45:11 17 Mr. Boardman as well.

01:45:11 18 You said if you had a state code of ZZ or something
01:45:14 19 like that, that would be an outlier. What does that mean?

01:45:18 20 A Well, some invalid data in one of the fields.

01:45:21 21 Q I see. Do you mean a state code like it should be OH
01:45:27 22 for Ohio and you see ZZ, that's not a state that really
01:45:31 23 exists?

01:45:31 24 A That's correct.

01:45:31 25 Q What did you do if you saw anomalies like that in the

01:45:34 1 data?

01:45:35 2 **A** We attempted to identify if there was a way of
01:45:37 3 inferring what the right value should be. So, for example,
01:45:41 4 if it was Cleveland and we had a ZIP code but the state code
01:45:44 5 was ZZ, we would have put in OH. Otherwise, we left it as
01:45:50 6 is and treated it as an exception.

01:45:51 7 **Q** All right. So I interrupted you as you were
01:45:55 8 describing what you did with the data at a high level.

01:45:58 9 Is there anything else you wanted to say about what
01:45:59 10 you did with the data?

01:46:00 11 **A** Just reconciled it to the Walgreens distribution data.

01:46:08 12 **Q** Okay. You said you analyzed the Walgreens dispensing
01:46:12 13 data.

01:46:13 14 Was your team actually involved in collecting
01:46:17 15 Walgreens dispensing data from Walgreens?

01:46:19 16 **A** Yes, our team worked with Walgreens' IT people and
01:46:24 17 their businesspeople to identify the sources of that data
01:46:26 18 and to try and compile that data for the production in this
01:46:29 19 case.

01:46:29 20 **Q** How many fields of information did your team collect
01:46:33 21 from Walgreens for the prescriptions that were collected?

01:46:36 22 **A** Over 30. It might have been 33.

01:46:39 23 **Q** You mentioned a few minutes ago that you also looked
01:46:44 24 at hard copy data associated with a Notes sample. Was that
01:46:48 25 a smaller subset of prescriptions, of about 2,000

01:46:52 1 prescriptions?

01:46:52 2 **A** That's correct.

01:46:53 3 **Q** Did your team collect additional fields of information
01:46:57 4 in addition to the hard copy data that you mentioned for
01:47:00 5 that Notes sample of 2,000 prescriptions?

01:47:03 6 **A** Yes, another 30-plus fields for the notes.

01:47:05 7 **Q** The jury has heard a fair amount, including from a
01:47:10 8 witness earlier today, about the different fields of data
01:47:13 9 that are associated with prescriptions, so I won't ask you
01:47:16 10 about that.

01:47:18 11 What I do want to ask you though is, did every
01:47:21 12 prescription that you and your team collected from Walgreens
01:47:24 13 have every field populated?

01:47:27 14 **A** No.

01:47:27 15 **Q** For example, one of the fields, I believe, and you'll
01:47:34 16 correct me if I'm wrong, that was collected was either
01:47:36 17 called dispense time or fill time; is that correct?

01:47:40 18 **A** That's correct.

01:47:40 19 **Q** Is the dispense time or the fill time, is it your
01:47:47 20 understanding that's the hour and minute that the
01:47:49 21 prescription was filled?

01:47:50 22 **A** That's correct.

01:47:50 23 **Q** Was that field populated for every Walgreens
01:47:55 24 prescription that you collected?

01:47:57 25 **A** No, it was not.

01:47:57 1 Q Do you know why that is?

01:48:01 2 A I don't honestly, no.

01:48:03 3 Q What did you do -- what did you and your team do for
01:48:07 4 the prescriptions that had a missing fill time for whatever
01:48:10 5 reason?

01:48:10 6 A We left -- we loaded them with no fill time, and we --
01:48:17 7 and because -- we load them with no fill time rather than
01:48:22 8 guessing at what time it was, because you can't guess at a
01:48:24 9 time.

01:48:24 10 Q You didn't make up a fill time?

01:48:27 11 A Absolutely not. That would be inappropriate.

01:48:29 12 Q Why wouldn't you make up a fill time?

01:48:31 13 A It's inappropriate to make up data such as that. As I
01:48:36 14 mentioned earlier, if you can infer a value, so you have
01:48:40 15 Columbus and a ZIP code, you can infer the state of Ohio.
01:48:44 16 You can't infer the fill time, the time of the day, through
01:48:48 17 any other information available.

01:48:50 18 Q Now, Dr. McCann testified to the jury that he just
01:48:54 19 filled in the time of noon every time he lacked a fill time
01:49:01 20 in the dispensing data that he looked at.

01:49:03 21 Do you agree that that's an appropriate thing to --

01:49:06 22 MR. LANIER: I object to the characterization
01:49:07 23 of the testimony.

01:49:08 24 Q I'll ask you to assume --

01:49:10 25 THE COURT: Let's rephrase that, please.

01:49:11 1 MS. SWIFT: Sure. I'm happy to rephrase it.

01:49:13 2 **Q** I'll ask you to assume that Dr. McCann when he was
01:49:15 3 sitting where you are testified to the jury that when he
01:49:19 4 lacked a fill time, he filled in noon for all of the missing
01:49:23 5 fill times.

01:49:25 6 Do you agree that that would be an appropriate thing
01:49:28 7 to do with the data?

01:49:28 8 **A** Absolutely not.

01:49:30 9 **Q** And again, why is that?

01:49:31 10 **A** Again, if information can't be inferred, you can't
01:49:37 11 make up a value in there. It would be like just assuming
01:49:41 12 that every place that a state didn't appear they were all
01:49:44 13 Ohio everywhere or they were all California everywhere.
01:49:48 14 Just inappropriate.

01:49:48 15 **Q** Once you have your data collected and your database up
01:49:52 16 and running, what do you and your team do with the data?
01:49:56 17 What did you do with it in this case? What was the purpose
01:49:58 18 of collecting it all and putting it in a database?

01:50:00 19 **A** To be able to perform analysis, which is to say, to be
01:50:04 20 able to ask questions or interrogate the data to get answers
01:50:07 21 to specific questions or broad questions.

01:50:10 22 **Q** And is that in fact what you did in this case? Did
01:50:14 23 you receive questions from all sorts of folks, including
01:50:17 24 myself, and then run queries on the data to answer those
01:50:19 25 questions?

01:50:19 1 **A** Yes.

01:50:19 2 **Q** Okay. Then you said you also helped to create --
01:50:25 3 helped to present the data.

01:50:29 4 Does that -- what does that mean, help to present the
01:50:31 5 data? What did you do?

01:50:32 6 **A** We summarized the data in various charts and tables,
01:50:39 7 sometimes by store number, oftentimes differentiating one
01:50:43 8 county, Lake versus Trumbull, those sorts of things.

01:50:49 9 **Q** And then you said you responded to Dr. McCann, and
01:50:50 10 you've already talked a little bit about that, and we'll get
01:50:53 11 to that in a little more detail a little later on.

01:50:55 12 Before that, I want to ask you a few questions --
01:50:57 13 first I'm going to knock my water bottle off the table.

01:51:02 14 I want to ask you a few questions about just to make
01:51:06 15 clear what you are not doing in this case.

01:51:08 16 Are you a pharmacy expert?

01:51:11 17 **A** Negative.

01:51:12 18 **Q** Are you a pharmacist?

01:51:14 19 **A** Negative.

01:51:14 20 **Q** Are you a medical doctor?

01:51:16 21 **A** Negative.

01:51:16 22 **Q** Are you an expert in DEA regulations for pharmacies?

01:51:21 23 **A** Negative.

01:51:21 24 **Q** Do you have any expertise in DEA regulations at all?

01:51:25 25 **A** None whatsoever.

01:51:28 1 Q Are you offering any opinions on whether any pharmacy
01:51:31 2 in Lake or Trumbull County violated the law?

01:51:34 3 A Negative.

01:51:34 4 Q Are you offering any opinions on whether any pharmacy
01:51:37 5 in Lake or Trumbull County, or anywhere else, complied with
01:51:41 6 the law?

01:51:42 7 A Negative.

01:51:43 8 Q Okay. Now I want to change topics and talk to you
01:51:48 9 about some of the results that you reached in this case,
01:51:54 10 using some demonstratives to help the jury understand what
01:51:57 11 you did and what the data shows, okay?

01:51:59 12 A All right.

01:51:59 13 Q So first I want to ask you about the Walgreens
01:52:02 14 pharmacies in Lake and Trumbull County.

01:52:05 15 In the course of your work in this case, did you
01:52:08 16 determine how many Walgreens pharmacies there are in Lake
01:52:11 17 and Trumbull Counties?

01:52:11 18 A Yes, I did.

01:52:12 19 Q How many are there in Lake County?

01:52:13 20 A There are seven.

01:52:14 21 Q How many Walgreens pharmacies are there in Trumbull
01:52:18 22 County?

01:52:18 23 A Six.

01:52:19 24 Q Did you as a part of your work in this case create
01:52:22 25 maps showing where those Walgreens pharmacies are located?

01:52:26 1 **A** Yes, I did.

01:52:26 2 **Q** Okay.

01:52:28 3 MS. SWIFT: Mr. Pitts, if I could please
01:52:30 4 switch back to the computer.

01:52:33 5 **Q** And if you're following along in the binder, the
01:52:36 6 document I'm going to put on the screen is behind Tab 6.

01:52:47 7 And this is, for the record, it's Exhibit 2559.

01:52:52 8 Mr. Brunner, is this one of the demonstrative exhibits
01:52:56 9 that you prepared in the course of your work in this case?

01:52:59 10 **A** Yes.

01:52:59 11 **Q** Is this one of the maps that you created?

01:53:00 12 **A** Yes.

01:53:01 13 **Q** What does this map show?

01:53:03 14 **A** Specifically, this shows pins placed for all 13
01:53:12 15 Walgreens stores in Lake and Trumbull County.

01:53:15 16 **Q** And I'll just use my cursor. The pins that are up
01:53:19 17 here by the Lake, are those the seven Walgreens pharmacies
01:53:22 18 in Lake County?

01:53:23 19 **A** Yes.

01:53:23 20 **Q** And then these down here towards the bottom of the
01:53:26 21 map, are these the six Walgreens stores in Trumbull County?

01:53:30 22 **A** Yes.

01:53:30 23 **Q** All right. I'm going to go to page 3 of this
01:53:36 24 document.

01:53:41 25 Does this show, kind of zoomed in, the Lake County

01:53:45 1 Walgreens stores?

01:53:46 2 **A** Yes.

01:53:46 3 **Q** Now, you testified that there are seven Walgreens
01:53:51 4 stores in Lake County. I think I count eight pins on the
01:53:56 5 map.

01:53:56 6 What's going on there?

01:53:57 7 **A** Yes. In the -- so in the left portion of that, just
01:54:03 8 along the coastline, you see a blue pin and a yellow pin
01:54:08 9 immediately adjacent to each other.

01:54:09 10 **Q** These that I'm highlighting right here?

01:54:11 11 **A** That's correct.

01:54:12 12 **Q** Yes.

01:54:12 13 **A** Those two stores are identified with a common number
01:54:16 14 in the ARCOS data. The circumstances, there was a Walgreens
01:54:22 15 that moved just down the street, and the DEA used the same
01:54:28 16 number for both of those stores. So it closed, say, on a
01:54:32 17 Tuesday. It opened in the new location on a Wednesday. But
01:54:35 18 for DEA ARCOS reporting purposes, that's just one store. So
01:54:39 19 we plotted both of them here so they both could be seen, but
01:54:45 20 they represented one store in the eyes of the DEA.

01:54:47 21 **Q** Did you look to see how Dr. McCann treated that store
01:54:50 22 at those two locations?

01:54:51 23 **A** Yeah, he treated them the same way as I did.

01:54:53 24 **Q** All right. I'm going to pull up a different set of
01:54:58 25 maps. This is going to be Tab 7 in the binder, and it's

01:55:01 1 Exhibit 2560.

01:55:07 2 Is this another set of maps that you created for your
01:55:09 3 work in this case?

01:55:10 4 **A** Yes.

01:55:10 5 **Q** I'm just going to ask you, I think, about one of them.
01:55:25 6 I'm on page 7 of Exhibit 2560.

01:55:28 7 Can you tell us what this map shows?

01:55:29 8 **A** This shows the location of Walgreens Store Number
01:55:41 9 5549, which is located at 804 West Market Street.

01:55:44 10 **Q** And is that in Warren, Ohio?

01:55:46 11 **A** Yes, it is.

01:55:46 12 **Q** And we're going to hear more about this particular
01:55:51 13 Walgreens store later in your examination, but can you tell
01:55:55 14 us, is this the largest Walgreens store in Trumbull County?

01:55:59 15 **A** Yes.

01:55:59 16 **Q** All right. Is there anything else you can tell about
01:56:07 17 it from just looking at the map?

01:56:08 18 **A** The only thing that's readily identifiable is it's a
01:56:16 19 14-minute drive from the Mercy Health Medical Center.

01:56:22 20 **Q** Do you know why that's there?

01:56:24 21 **A** I don't recall why we put that on there, why we
01:56:27 22 included that.

01:56:27 23 **Q** All right. Now I'm going to change topics a little
01:56:29 24 bit again and ask you some questions about market share.

01:56:32 25 Did you do analysis of the data to determine the

01:56:37 1 market share of Walgreens and other pharmacies in Lake and
01:56:42 2 Trumbull Counties?

01:56:42 3 **A** Yes, I did.

01:56:42 4 **Q** What data did you use to calculate market share?

01:56:47 5 **A** The ARCOS data.

01:56:48 6 **Q** I'm going to ask you why you did that in a minute, but
01:56:52 7 just to take a step back, what does it mean to calculate
01:56:56 8 market share? What's a market share?

01:56:58 9 **A** Market share is looking at the aggregate sales of any
01:57:01 10 store or group of sales within a county relative to the
01:57:07 11 total sales in that county.

01:57:08 12 **Q** So you said you'd used ARCOS data to calculate market
01:57:12 13 share, and I think you testified already that the ARCOS data
01:57:16 14 is DEA data that reflects the purchases that a pharmacy
01:57:19 15 makes for opioids?

01:57:21 16 **A** Yes. So the -- for purposes of doing our market share
01:57:27 17 analysis, we mirrored Dr. McCann's approach, which is to use
01:57:32 18 the ARCOS data and look at purchases by those pharmacies --

01:57:38 19 **Q** Okay.

01:57:39 20 **A** -- for all the opioid purchasers within Lake and
01:57:43 21 Trumbull County.

01:57:43 22 **Q** Did you prepare a summary table, like a big
01:57:45 23 spreadsheet of numbers, in order to figure out what the
01:57:49 24 market share was for Walgreens and other pharmacies in Lake
01:57:53 25 and Trumbull County?

01:57:53 1 **A** Yes.

01:57:54 2 **Q** I'm going to put that on the screen, but because it's
01:57:57 3 a big Excel spreadsheet, I'm actually going to put the Excel
01:58:01 4 spreadsheet up. It's behind Tab 8 in the binders. We
01:58:05 5 worked hard to get it printable in a way that is readable,
01:58:08 6 but it's kind of hard to read.

01:58:15 7 And this is, for the record, Exhibit 2561.

01:58:19 8 Do you see that in front of you on the screen,
01:58:22 9 Mr. Brunner?

01:58:22 10 **A** I do.

01:58:22 11 **Q** Is what I have on the screen the summary that you
01:58:27 12 created showing the purchases of opioids by pharmacies in
01:58:35 13 Lake and Trumbull Counties?

01:58:35 14 **A** Yes.

01:58:36 15 **Q** And this particular sheet of the spreadsheet that I
01:58:40 16 have up, is this your summary of the pharmacies in Trumbull
01:58:45 17 County?

01:58:45 18 **A** Yes. You can see that in the first column.

01:58:47 19 **Q** And tell the jury just briefly what is shown in this
01:58:51 20 spreadsheet that is Exhibit 2561.

01:58:54 21 **A** Briefly, it's the county unique identifier from the
01:59:03 22 ARCOS data for each pharmacy; the name, the address, and
01:59:07 23 then further the writer details about the number of dosage
01:59:12 24 units, the number of MME, what have you.

01:59:13 25 **Q** How are these pharmacies ordered in this spreadsheet?

01:59:17 1 **A** In this spreadsheet they're ordered in descending
01:59:21 2 volume of MME.

01:59:23 3 **Q** And is that column B that says "Total ARKS MME
01:59:29 4 excluding buprenorphine and methadone"?

01:59:31 5 **A** That's correct.

01:59:31 6 **Q** What does that mean, "excluding buprenorphine and
01:59:35 7 methadone?"

01:59:35 8 **A** So the ARCOS data included 14 drugs. Two of those
01:59:39 9 were identified as treatment drugs, buprenorphine and
01:59:43 10 methadone. So we excluded those in the calculations of what
01:59:48 11 the total MME was.

01:59:50 12 **Q** Do you know from your work in this case whether
01:59:52 13 Dr. McCann did the same thing in some of his analyses?

01:59:56 14 **A** Yes.

01:59:56 15 **Q** Okay. What is the largest pharmacy identified in your
02:00:02 16 summary for Trumbull County?

02:00:03 17 **A** Franklin Pharmacy.

02:00:05 18 **Q** What is the second-largest pharmacy in Trumbull
02:00:08 19 County?

02:00:08 20 **A** Overholt's Champion.

02:00:10 21 **Q** And what is the third?

02:00:12 22 **A** Bellevue Medicine Shoppe.

02:00:15 23 **Q** And I'm saying first, second, and third.

02:00:18 24 Again, how are they ranked?

02:00:19 25 **A** They're ordered by the total volume, the number of MME

02:00:23 1 that they filled of prescriptions that they filled.

02:00:26 2 **Q** Why did you order them by total volume of MME? And as
02:00:31 3 you're answering that question, if you wouldn't mind,
02:00:32 4 please, reminding the jury what MME is.

02:00:34 5 **A** MME is morphine milligram equivalents, sort of a
02:00:39 6 standardized unit of measure to balance both the value and
02:00:44 7 the potency of the medicines dispensed. We ordered them
02:00:51 8 that way, I believe also the way that Dr. McCann ordered
02:00:53 9 them in his presentation of the data, as it puts the most
02:00:56 10 important numbers, the most important dispensers at the top,
02:01:03 11 and the low -- the ambulance and the veterinary clinic at
02:01:07 12 the bottom.

02:01:07 13 **Q** What do you mean when you say the most important?

02:01:09 14 **A** I mean those who dispense the highest volume of
02:01:14 15 opioids.

02:01:15 16 **Q** Okay. When you put together the summary of the
02:01:20 17 pharmacies in Trumbull County, does it include just
02:01:23 18 pharmacies?

02:01:24 19 **A** No, it also -- this particular list we've included
02:01:29 20 hospitals, clinics. I think we also have in this list, if
02:01:35 21 this is a complete list, everyone from practitioners,
02:01:39 22 veterinary clinics, ambulances, everyone who dispensed an
02:01:45 23 opioid.

02:01:46 24 **Q** For the bulk of your analysis, did you focus on a
02:01:49 25 subset of those categories of dispensers?

02:01:52 1 **A** Yes, we did.

02:01:52 2 **Q** What categories did you focus on?

02:01:54 3 **A** We limited it to pharmacies, hospitals, and clinics.

02:01:57 4 **Q** How many pharmacies -- well, first of all, why did you
02:02:00 5 limit it to that category, those three categories? Sorry.

02:02:03 6 **A** Well, combined, they represent more than 99.9 percent
02:02:07 7 of the volume of MME.

02:02:11 8 **Q** How many pharmacies, hospitals, and clinics are there
02:02:13 9 in Trumbull County?

02:02:14 10 **A** In Trumbull County, pharmacies, hospitals, and
02:02:20 11 clinics, in total there are 70.

02:02:21 12 **Q** How about for Lake County?

02:02:22 13 **A** 73.

02:02:23 14 **Q** Do you know from memory, and it's not a memory test,
02:02:27 15 we can look at the other page of the summary if it's
02:02:30 16 helpful, if you added in all the veterinary clinics,
02:02:33 17 ambulances, other entities that make up the rest of the
02:02:36 18 dispensers in the two counties, do you know what the total
02:02:39 19 number would be?

02:02:39 20 **A** Total would be about 350, 351, I think.

02:02:42 21 **Q** That total number that goes beyond pharmacies,
02:02:45 22 hospitals, and clinics, I believe we heard from a witness
02:02:48 23 earlier today that it would include even a K9 handler at a
02:02:53 24 police department who would have medications for training
02:02:55 25 purposes.

02:02:55 1 Did you even know that that was included?

02:02:57 2 **A** I wasn't aware specifically. I knew there was an
02:03:01 3 animal shelter. I wasn't aware there was a police.

02:03:03 4 **Q** Is it fair to say that you focused on the dispensers
02:03:07 5 that had the bulk of the volume?

02:03:09 6 **A** That's correct.

02:03:09 7 **Q** What is the biggest Walgreens in Trumbull County?

02:03:11 8 **A** In Trumbull County, that's Walgreens Store Number
02:03:16 9 5549, which is the one we saw on the map.

02:03:17 10 **Q** That's right.

02:03:19 11 How about -- I'm going to go to the tab for Lake
02:03:22 12 County.

02:03:23 13 What is the -- we'll do this in order.

02:03:25 14 What is the biggest pharmacy in Lake County?

02:03:27 15 **A** The Rite Aid.

02:03:32 16 **Q** And then what is the biggest Walgreens in Lake County?

02:03:36 17 **A** It's the Walgreens on SOM Center Road.

02:03:39 18 **Q** At 5881 SOM Center Road?

02:03:42 19 **A** Yes.

02:03:47 20 **Q** I'm going to show the first tab in Exhibit 2561.

02:03:51 21 What does this tab of the spreadsheet show?

02:03:55 22 **A** This tab summarizes all the -- everyone who is in the
02:04:01 23 pharmacies, hospitals, or clinics who are not one of the
02:04:06 24 pharmacies in this case.

02:04:07 25 **Q** So it's all of the dispensers in both counties except

02:04:10 1 for CVS, Walgreens, and Walmart; is that fair?

02:04:14 2 **A** That's correct.

02:04:15 3 **Q** Okay. And I note that you have a number of stores
02:04:19 4 here. Is that kind of a misnomer? And if so, can you
02:04:23 5 explain what is the number of stores reflected there?

02:04:26 6 **A** It's the number of actual physical locations.

02:04:29 7 **Q** And we see a total for both counties of 351. Does
02:04:34 8 that include all the veterinary clinics and all the other
02:04:37 9 entities that dispense opioids in some fashion that we
02:04:39 10 talked about a moment ago?

02:04:40 11 **A** Yes, that's correct.

02:04:40 12 **Q** All right. What is the overall MME -- sorry. What
02:04:54 13 percentage of the overall MME do pharmacies, clinics, and
02:04:59 14 hospitals -- strike that. You've already answered that
02:05:02 15 question.

02:05:03 16 I apologize, Mr. Brunner. You've helped us along by
02:05:07 17 answering a lot of my questions before I had to answer
02:05:10 18 them -- before I asked them.

02:05:11 19 Did you help us prepare a chart that is a little bit
02:05:14 20 prettier than this summary table to simplify and present
02:05:19 21 this data?

02:05:20 22 **A** Yes, I did.

02:05:20 23 **Q** Okay. Is the slide that I have on the screen that is
02:05:36 24 behind Tab 4, is this one of those charts?

02:05:39 25 **A** Yes, it is.

02:05:39 1 Q Okay. What does this chart show?

02:05:42 2 A Well, by county and combined, it shows the share of
02:05:50 3 pharmacies in this case, which are designated in blue, and
02:05:53 4 other locations, nonpharmacies, other hospitals, clinics,
02:05:59 5 what have you, in red.

02:05:59 6 Q And it has -- is it fair to say that this shows the
02:06:04 7 market share for the pharmacies in the case and the rest of
02:06:08 8 the locations both for Lake County, Trumbull County, and
02:06:10 9 then both counties combined?

02:06:12 10 A Yes.

02:06:12 11 Q What is the market share for the other locations, the
02:06:17 12 pharmacies that are not in the case, in Lake County?

02:06:20 13 A In Lake County, it's 57.8 percent.

02:06:24 14 Q What is the market share for the pharmacies in other
02:06:28 15 locations that are not in this case for Trumbull County?

02:06:31 16 A 80.7 percent.

02:06:34 17 Q And then lastly, when you combine the two counties
02:06:36 18 together, what is the market share for all of those other
02:06:39 19 locations, those other pharmacies, hospitals, and clinics,
02:06:42 20 that are not in this case?

02:06:43 21 A 71.9 percent.

02:06:46 22 Q All right. Now I want to go back to the summary we
02:07:02 23 were looking at a minute ago.

02:07:06 24 The last tab that I'm going to show you is this one.
02:07:10 25 The tab says "Buyer: Walgreens."

02:07:13 1 What does this page show?

02:07:15 2 **A** This shows for just Walgreens, both near the top and
02:07:21 3 broken out by Lake and Trumbull County, the Walgreens market
02:07:26 4 share of -- in each of those respective counties and in
02:07:32 5 total.

02:07:32 6 **Q** And for the totals, let's see, you've got market share
02:07:36 7 in terms of number of stores, dosage units, and MME for
02:07:42 8 different numbers of drugs that appear in the ARCOS data.
02:07:45 9 Is that what's shown here?

02:07:46 10 **A** That's correct.

02:07:47 11 **Q** And did you create a prettier chart to demonstrate
02:07:52 12 this information as well?

02:07:53 13 **A** Yes, I did.

02:07:54 14 **Q** I want to go back to Tab 3.

02:08:05 15 Is the slide that I've got on the screen that chart?

02:08:07 16 **A** Yes, it is.

02:08:08 17 **Q** Tell us what this shows in terms of the numbers for
02:08:10 18 the Walgreens' market share.

02:08:11 19 **A** So in Lake County, it shows that Walgreens had a
02:08:15 20 market share of 18.2 percent, and all other locations were
02:08:19 21 81.8 percent. In --

02:08:24 22 **Q** Go ahead.

02:08:24 23 **A** In Trumbull County, Walgreens had a market share of
02:08:27 24 12.3 percent, and all other locations were 87.7 percent.

02:08:36 25 And lastly, when you combine the two, Walgreens had a

02:08:39 1 market share of 14.5 percent, and all other locations were
02:08:44 2 85.5 percent.

02:08:46 3 **Q** And I think we've seen this already, but I'm going to
02:08:48 4 flip ahead to the next slide, which I believe is the tenth
02:08:52 5 page of the slide deck behind Tab 3.

02:08:56 6 And does this slide reflect some of the other data we
02:08:58 7 saw in the big table of numbers before?

02:09:00 8 **A** Yes, that's correct.

02:09:01 9 **Q** Is this just another way of demonstrating the
02:09:03 10 Walgreens market share?

02:09:05 11 **A** This demonstrates a number of locations, as opposed to
02:09:09 12 the actual market share, the volume. This goes by just the
02:09:12 13 physical locations.

02:09:13 14 **Q** Got it.

02:09:14 15 And what does it show for Lake County, Trumbull
02:09:16 16 County, and both counties combined?

02:09:18 17 **A** In Lake County, Walgreens had 7; the rest of the
02:09:23 18 locations were 66, so that's Walgreens was 7 out of 73.

02:09:27 19 **Q** And that's -- I apologize to interrupt.

02:09:30 20 That 73, that's just the pharmacies, clinics, and
02:09:32 21 hospitals?

02:09:33 22 **A** That's correct.

02:09:33 23 **Q** Got it.

02:09:36 24 How about for Trumbull County?

02:09:37 25 **A** In Trumbull County, Walgreens had 6 pharmacies out of

02:09:42 1 the total of 70, so there were 64 that were not Walgreens.

02:09:49 2 And then combined across the two counties, there were
02:09:51 3 13 Walgreens pharmacies and 130 other locations.

02:09:56 4 **Q** Something I probably should have asked you at the
02:09:57 5 outset when we were talking about the data that you looked
02:09:59 6 at in this case. This data that we've been focused on for
02:10:03 7 the market share analysis you testified was ARCOS data.

02:10:06 8 What is the time frame that is covered by the ARCOS
02:10:08 9 data?

02:10:08 10 **A** ARCOS data goes from 2006 to 2014.

02:10:16 11 **Q** Okay.

02:10:19 12 **A** 2008 through 2014. I'm sorry.

02:10:21 13 **Q** Don't guess. If you're not sure, we can come back to
02:10:24 14 it.

02:10:24 15 **A** I'd have to check my notes. I forget.

02:10:26 16 **Q** Do you know whether it says in the big summary table?
02:10:29 17 And actually, it might say on the slide.

02:10:31 18 **A** It goes to 2006. I'm sorry. Goes to 2006.

02:10:35 19 **Q** Do you see on the footer of the slide it says 2006?

02:10:38 20 **A** Yes.

02:10:39 21 **Q** Okay. Great. Now I'm going to change topics a bit
02:10:43 22 again. I want to ask you questions about the work that you
02:10:45 23 did to respond to Dr. McCann's opinions. First his opinions
02:10:53 24 about red flags, okay?

02:10:56 25 **A** All right.

02:10:56 1 Q Do you understand from your work in this case that
02:10:59 2 Dr. McCann performed an analysis of data looking at various
02:11:03 3 red flags that had been identified by another consultant
02:11:09 4 hired by the plaintiffs called Carmen Catizone?

02:11:11 5 A Yes.

02:11:12 6 Q I want to ask you about flag number 9 first, okay?

02:11:15 7 A Okay.

02:11:15 8 Q And to help you with that, I'll put "flag number 9" on
02:11:19 9 the screen.

02:11:27 10 And this is behind Tab 12 of your binder. It's just a
02:11:30 11 copy of Dr. McCann's report. And what I am showing is page
02:11:35 12 151 from Dr. McCann's report.

02:11:38 13 And do you recognize this, Mr. Brunner, from your work
02:11:42 14 as the section of Dr. McCann's report that lays out each of
02:11:46 15 the 16 red flags?

02:11:47 16 A Yes, I do.

02:11:47 17 Q All right. I'll call out flag number 9.

02:11:57 18 Do you see that it says, "Patient was dispensed two
02:12:00 19 short-acting opioid drugs on the same day"?

02:12:06 20 A Yes, I do.

02:12:06 21 Q Did you in the course of your work in the case
02:12:08 22 determine how Dr. McCann identified the prescriptions that
02:12:12 23 hit on this flag?

02:12:13 24 A Yes.

02:12:13 25 Q How did he do it?

02:12:14 1 **A** So he identified for each patient, he identified those
02:12:24 2 opioids that were -- that he determined to be short-acting
02:12:26 3 or they were flagged as short-acting, and looked for any
02:12:32 4 dispensations for that patient on the same day.

02:12:35 5 **Q** Did Dr. McCann include methadone as a short-acting
02:12:41 6 opioid?

02:12:41 7 **A** Yes, he did.

02:12:42 8 **Q** Did you look at how many Walgreens prescriptions
02:12:46 9 Dr. McCann flagged with flag 9?

02:12:48 10 **A** Yes, I did.

02:12:48 11 **Q** What was that number?

02:12:50 12 **A** In total for flag 9, I don't recall the number. I
02:12:57 13 don't recall the number off the top of my head. I don't
02:13:00 14 have my notes here.

02:13:01 15 **Q** That's all right. That's all right.

02:13:03 16 Did you look at -- actually, I can help you out with
02:13:06 17 that. Give me a minute.

02:13:11 18 **A** It's an exhibit to his report. I'm just trying to
02:13:15 19 find where it is here -- or it's a table referenced in his
02:13:18 20 report.

02:13:19 21 **Q** I have on the screen now Appendix 14 to Dr. McCann's
02:13:23 22 report. Is that the exhibit to his report that you're
02:13:24 23 thinking of?

02:13:25 24 **A** Yes.

02:13:27 25 **Q** I show you page 33.

02:13:30 1 Does page 33 of Dr. McCann's Appendix 14 refresh your
02:13:37 2 recollection as to how many prescriptions for Walgreens he
02:13:40 3 flagged on flag 9?

02:13:42 4 **A** Yes. 9,119.

02:13:44 5 **Q** Okay. Thank you, Mr. Brunner.

02:13:45 6 I'm going to go back to the page we were on before.

02:13:57 7 So you can see the language of the flag. "Patient was
02:14:01 8 dispensed two short-acting opioid drugs on the same day."

02:14:05 9 And we just saw that Dr. McCann flagged 9,119 of the
02:14:08 10 Walgreens prescriptions for this flag.

02:14:12 11 How many of those prescriptions were for methadone?

02:14:16 12 **A** I believe it was over 2,000. Again, I don't have my
02:14:23 13 notes here. I apologize.

02:14:24 14 **Q** That's all right.

02:14:25 15 Are there notes that would help you answer these
02:14:28 16 questions?

02:14:29 17 **A** Yes.

02:14:29 18 **Q** Do you have them handy in the building?

02:14:31 19 **A** They're in the witness room there, yes.

02:14:34 20 **Q** We'll, maybe we'll come back to that. Maybe you won't
02:14:36 21 need them.

02:14:37 22 Let's see. Maybe we'll come back to that.

02:14:47 23 I think you just said that you believe it was more
02:14:51 24 than 2,000 prescriptions that were flagged for methadone.

02:14:53 25 Was that the number of prescriptions that flagged that were

02:14:56 1 just the methadone prescriptions or was it also an
02:14:59 2 additional set of prescriptions that flagged because of the
02:15:02 3 methadone prescriptions?

02:15:04 4 **A** That's in total.

02:15:05 5 **Q** Got it.

02:15:06 6 **A** That's not just the methadone. Methadones was fewer
02:15:09 7 than that.

02:15:10 8 **Q** Let's slow down a little bit and explain for the jury
02:15:13 9 what that means.

02:15:14 10 When you looked at Dr. McCann's analysis, how did he
02:15:16 11 go about flagging prescriptions on flag 9?

02:15:19 12 **A** So if he identified a single short-acting opioid,
02:15:26 13 there's no flag. If he identified a second short-acting
02:15:30 14 opioid on the same day, he flagged both of those
02:15:33 15 transactions.

02:15:34 16 In circumstances where he used methadone -- or he
02:15:39 17 flagged for methadone, that means he would have flagged a
02:15:42 18 short-acting opioid and methadone. If the methadone had not
02:15:46 19 been flagged, neither of them should be flagged.

02:15:48 20 **Q** So if I ask you to assume that roughly 1500 of the
02:15:53 21 Walgreens prescriptions that were flagged on flag 9 were
02:15:56 22 methadone prescriptions and roughly twice that number were
02:16:02 23 another type of opioid, or were the number that flagged all
02:16:08 24 together, is that what you're saying, that both the
02:16:10 25 methadone prescription and the other short-acting opioid,

02:16:13 1 they would both flag?

02:16:14 2 **A** That's correct.

02:16:14 3 **Q** If the jury were to conclude that methadone is not a
02:16:20 4 short-acting opioid, it's a long-acting opioid, such that it
02:16:24 5 shouldn't have been included in flag 9, what would be --
02:16:29 6 what would be the impact of that mistake? Did you look at
02:16:33 7 that?

02:16:33 8 **A** Yes.

02:16:35 9 **Q** What would be the effect after taking out those
02:16:38 10 methadone prescriptions?

02:16:39 11 **A** A substantial reduction, I believe on the order of 31,
02:16:43 12 32 percent.

02:16:44 13 **Q** Got it. That's a 31 to 32 percent difference. Is it
02:16:50 14 fair to characterize that as an error rate, assuming that
02:16:53 15 was a mistake?

02:16:54 16 **A** I would call that an error rate.

02:16:55 17 **Q** Okay. Now I'm going to ask you some -- I'm going to
02:17:01 18 switch to another flag. I'm going to ask you some questions
02:17:03 19 about flag number 3.

02:17:10 20 Flag number 3 says, "Patient was dispensed opioid
02:17:14 21 prescriptions with overlapping days of supply that were
02:17:17 22 written by two or more prescribers."

02:17:19 23 Do you see that?

02:17:21 24 **A** Yes, I do.

02:17:21 25 **Q** Did you look at how Dr. McCann calculated the number

02:17:26 1 of prescriptions that flagged on flag 3?

02:17:28 2 **A** Yes, I did.

02:17:28 3 **Q** How did he do it?

02:17:29 4 **A** He -- for each -- an individual patient, if they had a
02:17:38 5 scrip for an opioid, he looked at how many days of supply
02:17:43 6 that was, and if there was another scrip within that day
02:17:49 7 supply called a 30-day window written by another prescriber,
02:17:54 8 he would flag that. He would flag both transactions.

02:17:58 9 **Q** Just to walk through it slowly, does flag 3 require
02:18:03 10 more than one prescription?

02:18:04 11 **A** Yes, it does.

02:18:04 12 **Q** Does flag 3 require that those prescriptions be
02:18:06 13 written by two or more prescribers?

02:18:08 14 **A** Yes, it does.

02:18:08 15 **Q** Does it require that the prescriptions have
02:18:11 16 overlapping days of supply?

02:18:12 17 **A** Yes, it does.

02:18:13 18 **Q** I want to pause on that one for a minute. I know that
02:18:16 19 you just explained it, but I want to try to make it more
02:18:20 20 concrete in the jury's mind.

02:18:22 21 Can you give an example of what it means to have two
02:18:25 22 prescriptions with overlapping days of supply?

02:18:29 23 **A** Yes. If, for example, I have a 30-day prescription,
02:18:37 24 just a low dose, whatever, and then I go in for tooth repair
02:18:40 25 or something like that and I need a short little two-day

02:18:44 1 thing written by the dentist, that would cause an overlap if
02:18:48 2 it was anytime during that 30-day window of the original
02:18:50 3 prescription.

02:18:51 4 Or if I got a scrip filled on January -- or on
02:18:55 5 February 1 and it was a 30-day prescription, if I got it
02:19:00 6 refilled on March 1, that overlaps because February is a
02:19:04 7 short month, that would also cause an overlap in red flags.

02:19:06 8 **Q** Did you look to see how Dr. McCann calculated the
02:19:12 9 overlap? So say you have the 30-day prescription that you
02:19:17 10 just described, if somebody -- and say a prescription's
02:19:21 11 filled on February 1, for example, and you come in on March
02:19:25 12 1 to fill another prescription. Would that -- would there
02:19:29 13 be an overlap there?

02:19:31 14 **A** Yes, because the overlapping days, the days supply for
02:19:36 15 that February 1 prescription was 30 days, and March 1 is
02:19:42 16 only 29 days later, so that would cause an overlap, in
02:19:45 17 Dr. McCann's logic.

02:19:45 18 **Q** Did you look to see how many of Walgreens'
02:19:49 19 prescriptions Dr. McCann flagged for flag 3?

02:19:52 20 **A** Yes, I did.

02:19:52 21 **Q** Do you happen to recall the number?

02:19:55 22 **A** 29,941, I believe.

02:19:57 23 **Q** Well, that's really close. Let me go just --

02:20:00 24 **A** 961.

02:20:01 25 **Q** Hold on. Give me a second.

02:20:12 1 Sorry. I flipped back to Appendix 14.

02:20:15 2 What is the number for flag 3?

02:20:16 3 **A** 29,641.

02:20:18 4 **Q** I think you transposed one number. Is that fair?

02:20:21 5 **A** That happens.

02:20:22 6 **Q** Okay. When Dr. McCann counted the prescriptions that
02:20:30 7 hit on flag 3, that 29,000-some odd prescriptions for the
02:20:35 8 Walgreens dispensing data, did he include in his hit count,
02:20:41 9 his flagged prescriptions, did he include the first
02:20:44 10 prescription that the patient filled?

02:20:45 11 **A** Yes, he did.

02:20:46 12 **Q** So this is another thing I want to take sort of slowly
02:20:49 13 to make sure that it's clear.

02:20:53 14 So in the examples that you gave before, if you go in
02:20:56 15 to fill the first prescription on February 1, is there any
02:21:02 16 overlap with any other prescription at that point in time?

02:21:06 17 **A** No. I'm new to Ohio. That's the first time I've
02:21:10 18 gotten a scrip there. That's the first transaction.

02:21:13 19 **Q** Did Dr. McCann nonetheless flag that first
02:21:17 20 prescription for purposes of flag 3?

02:21:20 21 **A** Yes, he did.

02:21:20 22 **Q** At the time when that first prescription is dispensed,
02:21:26 23 is there any information from a data perspective that would
02:21:32 24 allow you to know that there was at some point in the future
02:21:35 25 going to be an overlapping prescription?

02:21:37 1 **A** Nothing at all.

02:21:38 2 **Q** But Dr. McCann flagged those first prescriptions?

02:21:41 3 **A** Yes, he did.

02:21:41 4 **Q** Okay. When does the overlapping data -- days of
02:21:49 5 supply, when does that occur in the data?

02:21:51 6 **A** That wouldn't show up until 29 days later, when the
02:21:56 7 pharmacist filled the March 1 transaction.

02:21:58 8 **Q** If the jury were to conclude that it was not
02:22:02 9 appropriate to flag the first prescription before there was
02:22:06 10 any overlap with any later prescription, did you look to see
02:22:12 11 how many prescriptions would need to be subtracted from that
02:22:16 12 29,641 we spoke about a moment ago?

02:22:18 13 **A** About 30 percent of them.

02:22:20 14 **Q** You said about 30 percent of them; is that right?

02:22:27 15 **A** Yes.

02:22:27 16 **Q** Is it fair to characterize that as a 30 percent error
02:22:30 17 rate?

02:22:31 18 **A** That's a 30 percent error rate, yes.

02:22:33 19 **Q** When Dr. McCann counted the prescriptions that hit on
02:22:44 20 flag 3, did he also include prescriptions where there were
02:22:48 21 only three days of overlap or less?

02:22:50 22 **A** Yes, he did.

02:22:51 23 **Q** Did you look to see how many prescriptions in the
02:22:55 24 Walgreens data flagged based on three days of overlap or
02:22:59 25 less than that?

02:22:59 1 **A** Yes, I did.

02:23:00 2 **Q** And how many were there?

02:23:02 3 **A** Over 68 percent.

02:23:04 4 **Q** I'm sorry, what was the number?

02:23:05 5 **A** Over 68 percent of the 29,000.

02:23:09 6 **Q** And that 68 percent, are you saying that if you
02:23:12 7 subtracted the prescriptions that flagged because of a
02:23:17 8 three-day overlap or less, it would be a 68 percent
02:23:21 9 difference in the amount flagged?

02:23:22 10 **A** Yes, a 68 percent error rate, leaving just 32 percent.

02:23:27 11 **Q** Did you look to see whether any other of Dr. McCann's
02:23:32 12 red flags required overlap between prescriptions, such that
02:23:40 13 you would have a first prescription that was flagged before
02:23:42 14 there was any overlap?

02:23:43 15 **A** Yes, I did.

02:23:44 16 **Q** All right. I'll put Dr. McCann's report back up on
02:23:46 17 the screen just to make it easier for you to tell us which
02:23:49 18 ones those were, or whether there were any.

02:23:54 19 Were there some?

02:23:55 20 **A** Yes, there were.

02:23:55 21 **Q** All right. We're back to page 151 of Dr. McCann's
02:24:02 22 report, which you can see it starts at flag number 2.

02:24:07 23 Just for completeness sake, I'll go back a page so you
02:24:10 24 can see the first flag. And I'll ask you to let us know
02:24:14 25 which other flags of the 16 red flags that the jury has

02:24:18 1 heard about required an overlapping days supply such that
02:24:24 2 there was a first prescription that was flagged before there
02:24:27 3 was any overlap.

02:24:30 4 **A** 4, method 5, method 7.

02:24:44 5 **Q** Let me know if you want me to go to the next page.

02:24:56 6 **A** Method 14, method 15.

02:25:02 7 **Q** What about method 12?

02:25:04 8 **A** And number 12, yes.

02:25:08 9 **Q** And then we've already talked about number 3.

02:25:11 10 Just so we don't rush past it, I'll go back a page.

02:25:15 11 You said method 4, which is "A patient was dispensed opioid
02:25:23 12 prescriptions with overlapping days of supply at two or more
02:25:26 13 pharmacies."

02:25:27 14 For that flag, did Dr. McCann flag the first
02:25:31 15 prescription before there was any overlap?

02:25:33 16 **A** Yes, he did.

02:25:33 17 **Q** For flag number 5, it says "Patient was dispensed an
02:25:39 18 opioid, a benzodiazapine, and a muscle relaxer for
02:25:43 19 overlapping days of supply."

02:25:45 20 Same thing happened there?

02:25:46 21 **A** Yes.

02:25:46 22 **Q** All right. And the next one you mentioned was number
02:25:50 23 7. "Patient was dispensed an opioid and a benzodiazapine
02:25:56 24 within 30 days of one another."

02:25:58 25 Did Dr. McCann flag the first prescription before

02:26:02 1 there was any overlap?

02:26:03 2 **A** Yes.

02:26:04 3 **Q** And then I think the next one on the list is number
02:26:07 4 12. What does number 12 say? I'll have you read it. I'm
02:26:11 5 doing too much talking.

02:26:13 6 **A** "An opioid was dispensed to at least four different
02:26:15 7 patients on the same day, and the opioid prescriptions were
02:26:18 8 written for the same base drug, strength, and dosage form,
02:26:20 9 and were written by the same prescriber."

02:26:23 10 **Q** So for this one, is it fair to say you wouldn't have
02:26:28 11 all of the criteria necessary for the flag until that fourth
02:26:32 12 prescription is filled?

02:26:33 13 **A** That's correct. There would be no reason to flag the
02:26:37 14 first three.

02:26:38 15 **Q** I'm sorry?

02:26:39 16 **A** There would be no reason to flag the first three -- I
02:26:42 17 mean four.

02:26:42 18 **Q** Well, setting that aside, did Dr. McCann flag the
02:26:44 19 first, second, and third prescription as well?

02:26:47 20 **A** Yes, he did.

02:26:49 21 **Q** And just to be clear, when that first prescription in
02:26:54 22 time is filled, is there anything that you can tell from a
02:26:56 23 data perspective about the fact that there are going to be
02:26:59 24 later prescriptions?

02:27:02 25 **A** Negative.

02:27:04 1 Q At least not at the point when that first prescription
02:27:06 2 is filled?

02:27:07 3 A That's correct.

02:27:07 4 Q All right. That's number 12.

02:27:09 5 Read for us if you would, please, sir, number 14,
02:27:11 6 which is the next one you mentioned.

02:27:14 7 A "An opioid prescription was refilled more than five
02:27:19 8 days before the patient's previous prescription should have
02:27:21 9 run out."

02:27:23 10 Q So when the previous prescription is filled, is there
02:27:27 11 any way to tell at the time of that previous prescription
02:27:29 12 that there's going to be a later prescription filled five
02:27:32 13 days early?

02:27:33 14 A No.

02:27:33 15 Q But Dr. McCann flagged that previous prescription?

02:27:36 16 A Yes, he did.

02:27:38 17 Q All right. The last one on your list is number 15.
02:27:41 18 Would you read that one for us, please.

02:27:44 19 A "A patient was dispensed more than 210 days of supply
02:27:48 20 of all opioids combined in a six-month period."

02:27:52 21 Q So this one's worded a little bit differently than the
02:27:56 22 others.

02:27:56 23 Why do you include this one as one of the flags that
02:27:59 24 flagged the first prescription before there was any overlap?

02:28:01 25 A It's similar in that it requires a look-back in some

02:28:09 1 effects. You need to be able to look at the previous six
02:28:12 2 months of activity. So when filling one prescription, the
02:28:16 3 first prescription possibly, there is no prior history for
02:28:21 4 it to be compared to. It's not until the second or
02:28:24 5 subsequent transactions where there's something in the
02:28:27 6 history to compare it to.

02:28:28 7 **Q** And Dr. McCann flagged all of that previous history;
02:28:33 8 is that what you're saying?

02:28:33 9 **A** That's correct.

02:28:34 10 **Q** Okay. Changing topics.

02:28:37 11 You mentioned at the outset a Notes sample of 2,000
02:28:43 12 prescriptions. Do you remember that?

02:28:44 13 **A** Yes.

02:28:44 14 **Q** I'm going to ask you some questions about that.

02:28:46 15 Did you look at doctor -- well, let me take a step
02:28:50 16 back. I think you said this already, but just to reorient
02:28:53 17 us on the Notes sample, you and your team, did you help
02:28:58 18 Walgreens collect additional data, Notes data and other
02:29:02 19 information, for a sample of 2,000 prescriptions?

02:29:05 20 **A** Yes, we did.

02:29:05 21 **Q** All of those prescriptions were prescriptions that had
02:29:11 22 Dr. McCann, Dr. Catizone's red flags, right?

02:29:14 23 **A** Yes.

02:29:15 24 **Q** Did you also look at Dr. McCann's analysis of the
02:29:22 25 sample of prescriptions that you and your team collected?

02:29:24 1 **A** Yes, we did.

02:29:24 2 **Q** And just to make it clear, you helped Walgreens
02:29:27 3 collect the sample of red flag prescriptions. Did your team
02:29:31 4 also provide that information on all of those prescriptions
02:29:35 5 to the plaintiffs in this case?

02:29:38 6 **A** Yes.

02:29:38 7 **Q** And then you understand because you've seen it that
02:29:43 8 Dr. McCann performed some analysis on that sample; is that a
02:29:45 9 fair statement?

02:29:46 10 **A** That's fair.

02:29:46 11 **Q** Okay. I'll refer to those 2,000 prescriptions as the
02:29:51 12 Notes sample. Is that okay?

02:29:52 13 **A** Perfect.

02:29:52 14 **Q** In collecting the notes and other information for the
02:30:05 15 Notes sample, what did your team actually collect? Try to
02:30:08 16 make it concrete for the jury.

02:30:09 17 **A** General dispensing data, which is data about -- for
02:30:15 18 every prescription in the sample. Information about who the
02:30:19 19 prescriber was, which pharmacist filled it, what the
02:30:23 20 medication was, information about the patient, that sort of
02:30:26 21 thing.

02:30:27 22 **Q** Did you also collect, to the extent that it existed,
02:30:30 23 electronic Notes data associated with each of those
02:30:34 24 prescriptions?

02:30:34 25 **A** Yes, we did.

02:30:34 1 Q Did you also collect, to the extent it was available,
02:30:40 2 hard copy prescriptions associated with that sample of
02:30:43 3 2,000?

02:30:44 4 A Yes, we did.

02:30:44 5 Q Did you and your team also collect electronic
02:30:51 6 information on all prior opioids prescriptions for the
02:30:56 7 patients in the sample?

02:30:58 8 A Yes. We call those the expanded patient histories.

02:31:02 9 Q When you collected the expanded patient histories,
02:31:05 10 what were you collecting?

02:31:06 11 A We were collecting all information. So if a sample
02:31:13 12 transaction was, say, a fill in 2010 for a given patient, we
02:31:18 13 collected the data associated with any prescriptions they
02:31:21 14 had had filled anytime before 2010, including both the
02:31:26 15 information about the scrip and any notes that had been made
02:31:30 16 about the prior fills.

02:31:31 17 Q So for the patients who had prescriptions in the
02:31:36 18 sample of 2,000, how many prescriptions did you and your
02:31:41 19 team collect altogether?

02:31:42 20 A In total, including the sample transaction, or the
02:31:47 21 sample items, there were 155,597 records.

02:31:53 22 Q That 155-some-odd-thousand records, is each of those
02:31:59 23 records a prescription?

02:31:59 24 A Yes.

02:32:00 25 Q And there were a bunch of fields of data associated

02:32:02 1 with each of those prescriptions?

02:32:04 2 **A** Yes.

02:32:04 3 **Q** Did you and your team provide all of those 155,000
02:32:12 4 prescriptions to the plaintiffs in this case?

02:32:13 5 **A** Yes, the complete expanded patient histories were
02:32:17 6 provided, yes.

02:32:17 7 **Q** Are you aware of whether Dr. McCann put together a
02:32:25 8 summary of the Walgreens Notes data?

02:32:28 9 **A** Yes.

02:32:29 10 **Q** Have you looked at that summary?

02:32:30 11 **A** Yes, I have.

02:32:31 12 **Q** How many -- is Dr. McCann's summary an Excel
02:32:37 13 spreadsheet?

02:32:37 14 **A** Yes.

02:32:37 15 **Q** How many rows are in Dr. McCann's summary for
02:32:40 16 Walgreens of the Notes prescriptions?

02:32:42 17 **A** Including the title row, I think there were 2,001.

02:32:47 18 **Q** Is it one row per prescription?

02:32:49 19 **A** Yes.

02:32:49 20 **Q** Does Dr. McCann's Walgreens summary of the Notes
02:32:53 21 prescriptions include all of the data that you provided to
02:32:57 22 the plaintiffs' lawyers, including the expanded patient
02:32:58 23 histories?

02:32:59 24 **A** No, it does not.

02:33:00 25 **Q** How much of the data that your team put together was

02:33:08 1 missing from Dr. McCann's Walgreens summary?

02:33:10 2 **A** There were 11 files produced, Excel files, what have
02:33:16 3 you, with detail. Based on our review, it looks like
02:33:21 4 Dr. McCann incorporated three of those files.

02:33:23 5 **Q** So to put it in terms of I have it in my head as an
02:33:28 6 Excel spreadsheet with one row per prescription. You
02:33:30 7 testified a moment ago that Dr. McCann's summary for
02:33:32 8 Walgreens had 2,000 rows for 2,000 prescriptions.

02:33:36 9 How many rows would there have needed to be if he had
02:33:40 10 included all of the data that you provided?

02:33:43 11 **A** 155,597.

02:33:47 12 **Q** So he was off by about 154,000?

02:33:56 13 **A** Yeah.

02:33:56 14 **Q** Do you know from your work in this case that
02:33:59 15 Mr. Catizone, the consultant hired by the plaintiffs to
02:34:01 16 offer pharmacy-related opinions, that he received the
02:34:04 17 summary that Dr. McCann prepared of the Walgreens notes?

02:34:09 18 **A** No.

02:34:09 19 **Q** Do you know whether Mr. Catizone was ever provided
02:34:12 20 with the data that you and your team put together?

02:34:17 21 **A** I don't know that Mr. Catizone was provided it, no.

02:34:20 22 **Q** All right. I want to show you a slide that Mr. Lanier
02:34:23 23 used in Mr. Catizone's testimony about the Walgreens Notes
02:34:27 24 sample that we've been talking about.

02:34:29 25 MS. SWIFT: And for this, Mr. Pitts, could I

02:34:32 1 please have the ELMO?

02:34:35 2 **Q** This is behind Tab 10 in the binder.

02:34:46 3 Can you see that on the screen, Mr. Brunner?

02:34:49 4 **A** Yes.

02:34:49 5 **Q** All right. It says in the first -- you can see from
02:34:53 6 the top line we're talking about Walgreens Pharmacy Notes?

02:34:58 7 **A** Yes.

02:34:58 8 **Q** The slide says, "Of the 2,000 prescriptions total,
02:35:01 9 only 160 prescriptions contain some writing in the DUR
02:35:08 10 comment field regardless of DUR alert."

02:35:11 11 Do you see that?

02:35:11 12 **A** Yes, I do.

02:35:12 13 **Q** Do you see that "only 160 prescriptions" is circled
02:35:15 14 there?

02:35:15 15 **A** Yes, I do.

02:35:15 16 **Q** Is that an accurate statement based on your review of
02:35:19 17 the Walgreens Notes prescriptions that were provided in this
02:35:23 18 case?

02:35:23 19 **A** No. It should be 555.

02:35:25 20 **Q** And tell us, if you would, please, what is that 555?

02:35:29 21 **A** That represents the number of prescriptions which,
02:35:33 22 when one considers the patient histories, have comments
02:35:38 23 fields filled in.

02:35:38 24 **Q** It says specifically a dur_comment field.

02:35:42 25 Do you know what DUR stands for?

02:35:44 1 **A** Drug usage review, if I'm not mistaken.

02:35:48 2 **Q** And I understand you're not offering pharmacy
02:35:51 3 opinions. But from your work in this case, can you tell the
02:35:53 4 jury, is the dur_comment field just one of several comment
02:35:57 5 fields that was produced with the Walgreens Notes?

02:36:00 6 **A** There are many different comment fields. That's one
02:36:03 7 of them.

02:36:03 8 **Q** I want to show you one more slide from Mr. Catizone's
02:36:06 9 testimony. And this one is either right before or right
02:36:13 10 after the one that I have on the screen right now. If I can
02:36:16 11 find it.

02:36:26 12 Can you see that on the screen?

02:36:27 13 **A** Yes.

02:36:27 14 **Q** It says, again, we're talking about Walgreens Pharmacy
02:36:31 15 Notes, right?

02:36:32 16 **A** Yes.

02:36:33 17 **Q** This one says, "Walgreens' relevant notes fields:
02:36:40 18 1,237 were blank across all these comment fields,
02:36:43 19 representing about 61 percent of the sample."

02:36:46 20 I'll stop there and just ask you, based on your work
02:36:48 21 in this case, is that an accurate statement?

02:36:50 22 **A** No.

02:36:50 23 **Q** All right. Then it goes on to say, "Of these 1,237
02:36:57 24 prescriptions that were blank across all relevant comment
02:37:00 25 fields, there were 940 prescriptions that also had nothing

02:37:03 1 written on the hard copy prescription, representing 47
02:37:06 2 percent of the sample."

02:37:07 3 Based on your work in this case, is that an accurate
02:37:10 4 statement?

02:37:11 5 **A** No.

02:37:11 6 **Q** Did you compile charts in this case showing how many
02:37:17 7 of the prescriptions in the Walgreens Notes sample had notes
02:37:22 8 and other information associated with them?

02:37:24 9 **A** Yes, I did.

02:37:26 10 **Q** I'm going to show you one of those charts.

02:37:29 11 MS. SWIFT: Mr. Pitts, if I could switch back
02:37:31 12 to the computer, please.

02:37:32 13 **Q** This is going to be behind Tab 3.

02:37:44 14 And Mr. Brunner, this -- well, I'll ask you if you
02:37:47 15 recognize what this is on the screen.

02:37:48 16 **A** Yes. This is from my report, my supplemental report.

02:37:51 17 **Q** Your supplemental report. I'll blow it up so it's
02:37:54 18 easier to read.

02:37:55 19 Is this one of the charts that you prepared to
02:37:58 20 demonstrate how many of the Notes sample prescriptions had
02:38:02 21 comments and other information associated with them?

02:38:04 22 **A** Yes.

02:38:04 23 **Q** What does it show, just at a high level?

02:38:07 24 **A** It shows a listing of the available comment fields or
02:38:12 25 Notes fields down the left-hand column, and then in the

02:38:16 1 first, second, and third column shows the number of times
02:38:20 2 for those samples that that field was populated someplace in
02:38:24 3 the patient history.

02:38:24 4 **Q** Is there a comment there that's called prescriber
02:38:29 5 location comments?

02:38:32 6 **A** Yes. It's the fifth from the top, yes.

02:38:34 7 **Q** What does -- what did you determine from your work in
02:38:37 8 this case with respect to the prescriber location comments?

02:38:41 9 **A** That almost 75 percent of them were populated.

02:38:47 10 **Q** And what does that mean when you say almost 75 percent
02:38:49 11 of them were populated?

02:38:50 12 **A** I mean if one looks at the patient histories for each
02:38:55 13 of those 2,000 and looks to identify was that field
02:38:58 14 populated for one of the fields in an individual patient's
02:39:04 15 history, was that field populated or not.

02:39:09 16 **Q** And for 74.5 percent of the 2,000 sample there was a
02:39:15 17 note in the comment field for some prescription for that
02:39:17 18 patient?

02:39:18 19 **A** That's correct.

02:39:18 20 **Q** Okay. Got it.

02:39:19 21 Then we've already talked about the DUR comments.
02:39:22 22 I'll make this bigger. It might be easier to see.

02:39:24 23 Do you see the DUR comments here on your chart?

02:39:28 24 **A** Yes. Yes, right there it's highlighted.

02:39:32 25 **Q** And that's the 555 you mentioned a moment ago?

02:39:35 1 **A** That's correct.

02:39:35 2 **Q** What percentage of the Notes sample had a DUR comment
02:39:40 3 associated with it?

02:39:41 4 **A** 27.75 percent.

02:39:43 5 **Q** All right. I'm going to scroll down.

02:39:47 6 And do you see that you've got hard copy Rx notes
02:39:51 7 here?

02:39:51 8 **A** I do.

02:39:52 9 **Q** Not to nitpick. I think the heading on the chart says
02:39:59 10 this is electronic. What does it say?

02:40:03 11 "Number and percentage of populated fields in
02:40:08 12 Walgreens' electronic Notes data."

02:40:11 13 The hard copy prescription notes, were those
02:40:13 14 electronic originally?

02:40:13 15 **A** They were electronic -- well, yes.

02:40:15 16 **Q** No, the hard copy prescriptions.

02:40:17 17 **A** The hard copy were hard copy initially, then they were
02:40:21 18 turned into electronic.

02:40:22 19 **Q** And just to be clear, the heading of the chart also
02:40:26 20 says, "Sample of 2,000 prescriptions with expanded patient
02:40:33 21 history." Did your team -- and it reflects that there were
02:40:37 22 155,957 prescriptions in that expanded history.

02:40:40 23 Do you see that?

02:40:41 24 **A** Yes.

02:40:41 25 **Q** Did your team collect hard copy prescriptions for all

02:40:46 1 of those in the expanded patient history?

02:40:50 2 **A** We endeavored -- of the -- not for all of the
02:40:53 3 historical ones. Of the 2,000 scrips in the sample, there
02:40:59 4 were I think 1,799 that were originally hard copy scrips
02:41:03 5 presented. We went to try and find those hard copies, not
02:41:10 6 for all the patient histories, that would have been an
02:41:12 7 insurmountable herculean effort.

02:41:15 8 **Q** So if I follow you, of the 2,000 sample, am I hearing
02:41:19 9 you correctly that not all 2,000 were presented in hard
02:41:22 10 copy?

02:41:22 11 **A** That's correct.

02:41:23 12 **Q** For the ones that weren't presented in hard copy, how
02:41:26 13 were they presented? What does that mean?

02:41:27 14 **A** Doctors can submit electronic prescriptions, I have
02:41:32 15 mine done that way, versus a patient walking in with a
02:41:36 16 prescription, a physical hard copy prescription.

02:41:39 17 **Q** For the hard copy prescriptions that were presented in
02:41:45 18 hard copy, did Walgreens find all 1,700 of them, or whatever
02:41:49 19 the number was?

02:41:50 20 **A** No, we were able to locate 1,246 of those hard copies.

02:41:55 21 **Q** Of the 1,246 hard copy prescriptions that you were
02:41:58 22 able to find, how many of those did your team determine had
02:42:02 23 some kind of a note on it?

02:42:03 24 **A** 1,136, or 91 percent.

02:42:08 25 **Q** Okay. All right. And just for completeness, I'll

02:42:19 1 zoom back out so you can see the whole screen.

02:42:21 2 Does this chart which is Table 1 in your supplemental
02:42:24 3 report, does it reflect all of the Notes information that
02:42:28 4 you and your team collected or is this just a subset?

02:42:31 5 **A** This is just a subset.

02:42:33 6 **Q** And the last one I'll highlight just for the jury's
02:42:35 7 consideration is do you see "phone comments" on here?

02:42:41 8 **A** It's about eight from the bottom, nine from the
02:42:44 9 bottom.

02:42:47 10 **Q** How many of the prescriptions in the sample had some
02:42:49 11 kind of a phone comment associated with them?

02:42:52 12 **A** 1,318.

02:42:53 13 **Q** And just to reiterate, are you offering any opinions
02:42:57 14 on the substance of any of the notes in any of these fields?

02:43:00 15 **A** Not at all.

02:43:06 16 **Q** All right. Now I'd like to change topics once again
02:43:08 17 and ask you some questions about some of the other
02:43:11 18 pharmacies located in Lake and Trumbull Counties, okay?

02:43:15 19 **A** Okay.

02:43:15 20 **Q** All right. Just to reorient you and the jury, we'll
02:43:22 21 go back to Exhibit 2561, which is your summary of the ARCOS
02:43:31 22 data for the -- that you used to do the market share
02:43:33 23 analysis.

02:43:34 24 Do you see that?

02:43:35 25 **A** Yes.

02:43:35 1 Q And we'll go to the Trumbull County tab, and we talked
02:43:38 2 about these pharmacies before.

02:43:40 3 Do you see these pharmacies at the top of the list,
02:43:43 4 Franklin, Overholt's, and Bellevue?

02:43:45 5 A Yes.

02:43:46 6 Q What can you tell us about the address for Overholt's
02:43:52 7 Pharmacy and Bellevue Medicine Shoppe?

02:43:55 8 A Those two, which are lines 2 and 3 of the data on the
02:43:58 9 screen, they're the same address. They're actually the same
02:44:01 10 building.

02:44:02 11 Q And do you know what happened there from your review
02:44:04 12 of the ARCOS data for these two pharmacies?

02:44:06 13 A Yes. Overholt's closed sometime around July of 2010.
02:44:13 14 Bellevue came in, got a new buyer DEA number, so a new ID
02:44:19 15 number from the DEA, and reopened in the same location as a
02:44:24 16 new pharmacy. Actually, in the DEA data they're identified
02:44:29 17 as Bellevue d/b/a Champion's Medical Shop.

02:44:34 18 Q Got it.

02:44:35 19 And does your summary include the dates that those two
02:44:39 20 pharmacies were open in that same location?

02:44:41 21 A Correct.

02:44:42 22 Q Okay. And you can see that here in columns I and J;
02:44:48 23 is that right?

02:44:48 24 A Yes.

02:44:48 25 Q Okay. In some of your analyses, have you combined

02:44:58 1 Overholt's Pharmacy with Bellevue/Champion Medicine Shoppe,
02:45:02 2 or -- I probably butchered -- Bellevue/Champion?

02:45:05 3 **A** Yes.

02:45:05 4 **Q** Why is it appropriate to combine those two together
02:45:08 5 for purposes of your analysis?

02:45:09 6 **A** As I say, most of our analyses are presented by
02:45:14 7 location. Those are at the same exact location. They have
02:45:16 8 the same sign over the door. It appears to be the same
02:45:19 9 thing, just with a different DEA registration number.

02:45:23 10 **Q** All right. Did you prepare a chart to, let's see,
02:45:32 11 summarize some of the information on this summary comparing
02:45:35 12 the biggest pharmacies in Trumbull County to the biggest
02:45:38 13 Walgreens in Trumbull County?

02:45:39 14 **A** Yes.

02:45:40 15 **Q** Is this one of those charts that I've got up on the
02:45:54 16 screen?

02:45:54 17 **A** Yes, it is.

02:45:54 18 **Q** And this is behind Tab 4 in the binder. It's the
02:45:57 19 eleventh slide in the slide deck.

02:46:00 20 What does this chart show specifically?

02:46:02 21 **A** It shows for the top few lines on that chart, which
02:46:11 22 are the largest, Overholt's Champions, Franklin, and then
02:46:16 23 each of the Walgreens in Trumbull County, it shows the
02:46:20 24 number of MME in ARCOS.

02:46:24 25 **Q** What is the total for Franklin Pharmacy?

02:46:26 1 **A** For Franklin it's 241,341,000 MME.

02:46:32 2 **Q** What is the total for Overholt's/Champion?

02:46:36 3 **A** 278.4 million MME.

02:46:40 4 **Q** And then rather than have you go through the totals

02:46:42 5 for all six of the pharmacies in Trumbull, do you have a

02:46:48 6 combined total for all of the Trumbull Walgreens there?

02:46:50 7 **A** Yeah, the total for all six Walgreens combined was 238

02:46:55 8 million.

02:46:55 9 **Q** How does that compare, the total for all six Walgreens

02:46:59 10 combined, how does it compare to Overholt's/Champion?

02:47:02 11 **A** All six of them combined are smaller than either one

02:47:06 12 of Overholt's or Champion or Franklin.

02:47:11 13 **Q** All six of the Walgreens combined are still less than

02:47:15 14 Overholt's/Champion all by itself?

02:47:16 15 **A** Yes.

02:47:17 16 **Q** And is the same true with respect to Franklin, all six

02:47:21 17 Walgreens are less than Franklin by itself?

02:47:22 18 **A** Yes.

02:47:23 19 **Q** All right. I'm going to go to the next slide.

02:47:28 20 What does this next slide show us?

02:47:31 21 **A** So this next slide, it repeats the Overholt's/Champion

02:47:37 22 and the Franklin pharmacies as a benchmark there. Then it

02:47:40 23 includes the detail for the seven Walgreens in Lake County.

02:47:46 24 **Q** And we won't repeat the numbers for

02:47:52 25 Overholt's/Champion and Franklin, but what is the combined

02:47:54 1 total for all -- is it seven Walgreens in Lake County?

02:47:57 2 **A** Yes.

02:47:58 3 **Q** What's the combined total for all seven of those
02:48:02 4 Walgreens?

02:48:03 5 **A** 220 million.

02:48:04 6 **Q** And how does that compare to Overholt's/Champion?

02:48:08 7 **A** That's less than Franklin and almost 20 percent less
02:48:14 8 than Overholt's.

02:48:15 9 **Q** So the seven Walgreens in Lake are smaller volume than
02:48:21 10 Overholt's Champion by itself?

02:48:22 11 **A** Yes.

02:48:22 12 **Q** Same is true comparing the Walgreens to Franklin?

02:48:24 13 **A** Yes.

02:48:25 14 **Q** All right. Now I'm going to pull up another -- a
02:48:31 15 different spreadsheet of yours. And I don't think I have
02:48:40 16 the actual spreadsheet on the laptop, so I'm going to have
02:48:42 17 to pull it up in PDF form. And I'll apologize in advance,
02:48:45 18 it's not going to be as pretty.

02:48:55 19 That's not too bad.

02:48:57 20 Do you recognize the document that I put on the
02:48:59 21 screen, which is Exhibit 2562? And it's behind Tab 9 of
02:49:04 22 your binder.

02:49:05 23 **A** Yes, I do.

02:49:06 24 **Q** What is this summary? This is a different kind of a
02:49:08 25 summary than we've seen so far, I believe.

02:49:10 1 **A** It's summarizing the cash payment activity for a group
02:49:16 2 of pharmacies, and for each of those pharmacies the nearest
02:49:20 3 physical Walgreens as well.

02:49:24 4 **Q** And what is this summary based on? What data did you
02:49:27 5 use to prepare this summary?

02:49:28 6 **A** This is based on the OARRS data provided by the Board
02:49:32 7 of Pharmacy.

02:49:32 8 **Q** And remind the jury, what kind of data is in OARRS
02:49:35 9 versus the data that's been in ARCOS that we've been looking
02:49:38 10 at up to now?

02:49:38 11 **A** The OARRS data has the individual prescription and
02:49:42 12 prescription fill information and method of payment, that
02:49:44 13 type.

02:49:45 14 **Q** And so with the OARRS prescription data, are you able
02:49:47 15 to answer different types of questions about the
02:49:51 16 prescriptions and the opioids involved in those
02:49:54 17 prescriptions than you can with the ARCOS data?

02:49:55 18 **A** Yes.

02:49:55 19 **Q** And I apologize if you just said that, but what kind
02:50:00 20 of analysis are you showing on this summary in Exhibit 2562?

02:50:03 21 **A** So one of the attributes for the OARRS data is forms
02:50:10 22 of payment. One of those forms of payment is cash. So from
02:50:14 23 the OARRS data we can determine what percentage of a given
02:50:17 24 store's filled prescriptions were paid with cash versus paid
02:50:21 25 with insurance.

02:50:22 1 Q And it looks like you're alternating between Walgreens
02:50:28 2 stores and other pharmacies in the two counties. Is that an
02:50:34 3 accurate statement?

02:50:35 4 A That's correct.

02:50:36 5 Q What's going on there? How did you put together this
02:50:38 6 chart?

02:50:39 7 A So we started with the list of the ones in white,
02:50:45 8 we'll just call them the ones in white for a moment, which
02:50:48 9 are not non-defendant pharmacies, so they're not Walgreens
02:50:51 10 or CVS or Walmart.

02:50:54 11 And as you see here, Franklin over there with 114,000,
02:50:59 12 that's the number -- we ranked them according to the number
02:51:02 13 of opioids filled. And for each one of these stores, we
02:51:06 14 found the nearest Walgreens, nearest as the crow flies.

02:51:09 15 Q And this is reflecting the percentage of cash payments
02:51:14 16 for what drugs?

02:51:15 17 A This is for -- I believe for all opioids.

02:51:20 18 Q Got it. And you're comparing the percentage of cash
02:51:23 19 payments to Franklin, for example, to the nearest Walgreens;
02:51:26 20 is that right?

02:51:26 21 A Yes.

02:51:26 22 Q Is that the same Franklin Pharmacy that we saw before
02:51:30 23 at the top of the list for Trumbull County?

02:51:31 24 A Yes, it is.

02:51:31 25 Q And then do you see Overholt's/Champion on the list

02:51:38 1 there too?

02:51:38 2 **A** Yes.

02:51:39 3 **Q** Did you help us prepare kind of a simpler, prettier
02:51:44 4 chart kind of reflecting some of this information?

02:51:46 5 **A** Yes.

02:51:54 6 **Q** Is this one of those charts?

02:51:56 7 **A** Yes, it is.

02:51:56 8 **Q** What is reflected in the chart that I just put on the
02:51:59 9 screen?

02:52:00 10 **A** So it's a summary of the previous information, which
02:52:04 11 shows that for Overholt's during the period while it was
02:52:07 12 open, 27.4 percent of their opioid prescriptions were paid
02:52:13 13 for with cash.

02:52:16 14 With Champion Bellevue, which is the reopened store,
02:52:20 15 16.9 percent of their opioid prescriptions were paid for in
02:52:24 16 cash.

02:52:25 17 And then for Walgreens, the number is 4.3 percent.

02:52:30 18 **Q** And which Walgreens is that that you're comparing
02:52:33 19 Overholt's and Champion to?

02:52:34 20 **A** We did our comparative to the nearest Walgreens, which
02:52:39 21 also happens to be the largest Walgreens in Trumbull County,
02:52:43 22 which is Walgreens Number 5549 at 804 West Market.

02:52:48 23 **Q** And that's in Warren, Ohio?

02:52:50 24 **A** That's correct.

02:52:50 25 **Q** I want to flip ahead just to the next slide for a

02:52:53 1 minute.

02:52:53 2 What does this slide show?

02:52:55 3 **A** So in the prior slide we had Overholt's on one line
02:53:00 4 and Champion Bellevue on another line. Here we've
02:53:03 5 consolidated the two.

02:53:04 6 **Q** How did you do that mathematically?

02:53:06 7 **A** Mathematically we just added the two rows together to
02:53:10 8 get new totals and then divided by their new total.

02:53:15 9 **Q** And does this allow you to compare the overall
02:53:18 10 percentage cash payment for the time period that either
02:53:22 11 Overholt's or Champion was open to the same time period for
02:53:26 12 that nearest Walgreens?

02:53:27 13 **A** That is correct.

02:53:27 14 **Q** And what does the data reflect when you do it that
02:53:30 15 way?

02:53:30 16 **A** 22.8 percent of Overholt's/Champion/Bellevue, whatever
02:53:36 17 we call that, were paid for in cash, versus 4.3 percent for
02:53:41 18 Walgreens.

02:53:41 19 **Q** Now, I'll ask you to assume with me that Mr. Catizone
02:53:45 20 testified that 90 to 95 percent of all patients have some
02:53:50 21 sort of insurance.

02:53:52 22 Is the Walgreens number for cash payments that we see
02:53:56 23 on this slide consistent with that in terms of people
02:53:59 24 without insurance paying in cash?

02:54:02 25 **A** Yes. 4.3 percent is well below the 5 to 10 percent he

02:54:09 1 described.

02:54:09 2 **Q** I believe I heard you say a couple of times now that
02:54:12 3 the Walgreens at 804 West Market is the closest one to 4619
02:54:17 4 Mahoning Avenue, which is where Overholt's/Champion was
02:54:21 5 located.

02:54:22 6 **A** That's correct.

02:54:22 7 **Q** How far apart are those two locations?

02:54:24 8 **A** Just a little bit less than four miles.

02:54:26 9 **Q** Did you do another analysis to see whether patients of
02:54:32 10 Overholt's and patients of Walgreens, the nearest Walgreens,
02:54:35 11 were filling the same kinds of opioid prescriptions, meaning
02:54:39 12 the similar strengths?

02:54:40 13 **A** Yes, we did.

02:54:41 14 **Q** This one's a little bit tougher to read. I'll call
02:54:59 15 out part of it.

02:55:01 16 Can you tell me whether this is the kind of
02:55:05 17 viewer-unfriendly version of that analysis?

02:55:08 18 **A** That is definitely the viewer-unfriendly version of
02:55:12 19 that analysis, yes; but, I mean, I can describe it if you --
02:55:14 20 if it helps.

02:55:15 21 **Q** Describe it at a high level, and then we'll go to the
02:55:18 22 viewer-friendly version if you will, please, sir.

02:55:21 23 **A** At a high level, this shows the white area for --
02:55:24 24 those are all Franklin Pharmacy transactions. And the first
02:55:28 25 row shows their stats for 80 milligram. The second line of

02:55:34 1 them shows the number for 60 milligram, and declining all
02:55:38 2 the way on down to 1 milligram. So it goes in declining
02:55:41 3 sequence or order of dosage.

02:55:45 4 **Q** And then I'll back out of it so we can see what else
02:55:48 5 you've shown on this slide.

02:55:51 6 Do you have the same information for Overholt's?

02:55:56 7 **A** That's correct.

02:55:56 8 **Q** And then the same information for Bellevue?

02:56:00 9 **A** Also correct.

02:56:02 10 **Q** Bellevue being the same as Champion Medicine Shoppe?

02:56:07 11 **A** Yes. In the raw data they're broken out, but --

02:56:10 12 **Q** Got it.

02:56:10 13 And if we continued on through this summary, would you
02:56:13 14 see the same information for the nearest Walgreens store?

02:56:15 15 **A** Yes.

02:56:15 16 **Q** Again, what Walgreens store is that?

02:56:17 17 **A** 5549 at 804 West Market in Warren.

02:56:23 18 **Q** Now I'm going to show you the prettier version of that
02:56:27 19 one.

02:56:30 20 Tell me, please, sir, if this is the simpler version
02:56:33 21 of a subset of that data we were just looking at.

02:56:36 22 **A** Yes.

02:56:36 23 **Q** What does it show?

02:56:38 24 **A** So for this one, it has Overholt's and
02:56:45 25 Bellevue/Champion broken out into two different sections.

02:56:47 1 And for each of those it shows the percentage of their
02:56:53 2 prescriptions that were high dose.

02:56:54 3 **Q** How did you define high dose or high strength?

02:56:57 4 **A** We defined those -- I'm sorry. High strength, we
02:57:01 5 defined those as anything that's 20 milligrams or higher for
02:57:05 6 these purposes.

02:57:05 7 **Q** And what does it show -- what does the comparison show
02:57:09 8 here? What are the numbers?

02:57:10 9 **A** This shows 23.3 percent of the Overholt's
02:57:16 10 prescriptions were high dose. 14.6 percent of the
02:57:21 11 Champion/Bellevue were high dose -- I'm sorry, high
02:57:25 12 strength. And 3.1 percent of those at Walgreens, the
02:57:29 13 nearest Walgreens, were high dose.

02:57:32 14 **Q** And if we flip to the next slide, does this just show
02:57:36 15 how the numbers change if you combine Overholt's and
02:57:40 16 Champion/Bellevue together?

02:57:41 17 **A** Yes, that's correct.

02:57:41 18 **Q** And what does it show when you combine those together?
02:57:45 19 What is the percentage of their oxycodone prescriptions that
02:57:48 20 are high strength?

02:57:50 21 **A** Their high strength is 19.4 percent.

02:57:53 22 **Q** And again, that compares to 3.1 percent for the
02:57:55 23 nearest Walgreens?

02:57:56 24 **A** That's correct.

02:57:57 25 **Q** All right. I've got one more of these little sets of

02:58:00 1 charts to show you, and then we're getting close to the end.

02:58:02 2 Did you also look at patients who filled either
02:58:08 3 oxycodone or hydrocodone in combination with Xanax, a
02:58:12 4 benzodiazapine, and the numbers of those patients who filled
02:58:17 5 prescriptions at Overholt's versus the nearest Walgreens?

02:58:19 6 **A** Yes, we did.

02:58:20 7 **Q** Is this that I've got on the screen, which is another
02:58:33 8 tab from Exhibit 2562, does this reflect the results of that
02:58:37 9 analysis?

02:58:38 10 **A** Yes, it does.

02:58:38 11 **Q** Then did you prepare a simpler chart to summarize a
02:58:45 12 subset of this information?

02:58:47 13 **A** Yes, we did.

02:58:48 14 **Q** Is this that chart?

02:58:57 15 **A** Yes, it is.

02:58:58 16 **Q** Please tell us what this chart shows.

02:59:00 17 **A** This shows for Overholt's, for Champion/Bellevue, and
02:59:06 18 for Walgreens, the percentage of their total number of
02:59:10 19 opioid prescriptions that were filled that were filled in
02:59:14 20 combination with the Xanax.

02:59:15 21 **Q** Why did you focus on just Xanax?

02:59:19 22 **A** There were data limitations, if I'm not mistaken. I'm
02:59:23 23 not sure that the available -- the OARRS data had all
02:59:29 24 other --

02:59:30 25 **Q** Benzodiazapines?

02:59:31 1 **A** -- benzodiazapines -- I'm not a chemist, not a
02:59:33 2 pharmacist -- benzodiazapines available.

02:59:37 3 **Q** Did OARRS include very much data on muscle relaxers?

02:59:41 4 **A** I don't -- no, I don't believe so.

02:59:43 5 **Q** Do you recall whether it included more than one?

02:59:47 6 MR. WEINBERGER: Objection, Your Honor.

02:59:48 7 **A** I don't recall off the top of my head.

02:59:50 8 THE COURT: Sustained.

02:59:50 9 **Q** What does the data show for this comparison of the
02:59:56 10 combination prescriptions? What are the numbers?

02:59:57 11 **A** For Overholt's, that combination is 13.6 percent of
03:00:04 12 all opioids, opioid transactions. For Champion/Bellevue
03:00:09 13 it's 11.3 percent. And for Walgreens it's 3.0 percent.

03:00:14 14 **Q** All right. One more topic for you.

03:00:19 15 Did you in the course of your work in this case also
03:00:23 16 look at the Ohio Board of Pharmacy's methods for identifying
03:00:31 17 doctor shoppers?

03:00:32 18 **A** Yes, we did.

03:00:32 19 **Q** I want to ask you about one of those.

03:00:34 20 Do you understand from your work that the Board of
03:00:36 21 Pharmacy in Ohio had more than one different method for
03:00:40 22 identifying doctor shoppers over time?

03:00:42 23 **A** Yes.

03:00:42 24 **Q** And we actually heard from a Board of Pharmacy witness
03:00:46 25 this morning that at one point in time, the way the Ohio

03:00:51 1 Board of Pharmacy identified doctor shoppers was to look at
03:00:54 2 patients who had prescriptions from five prescribers filled
03:01:01 3 at five pharmacies in a three-month period.

03:01:04 4 Is that different from the analysis that you did?

03:01:06 5 **A** Yes, it is.

03:01:07 6 **Q** All right. I'm going to show you -- ask you about one
03:01:09 7 of the analyses that you did, but the first question I have
03:01:14 8 is about where you got the information that you relied on.
03:01:17 9 And for that I'm going to show you an exhibit that is
03:01:23 10 Defendants' MDL-1820, and it's behind tab 14.

03:01:42 11 Do you have it in front of you?

03:01:43 12 **A** Yes.

03:01:43 13 **Q** Do you recognize this document?

03:01:45 14 **A** Yes.

03:01:45 15 **Q** Is this a document that provided a method of
03:01:49 16 identifying doctor shoppers in dispensing data?

03:01:52 17 **A** Yes, it is.

03:01:53 18 **Q** Do you remember where in this -- well, I'll identify
03:01:56 19 it for the record.

03:01:57 20 It's an OARRS 2017 Annual Report from the Ohio Board
03:02:03 21 of Pharmacy.

03:02:03 22 Do you see that?

03:02:06 23 **A** Yes.

03:02:06 24 **Q** Do you remember where in this document you got the
03:02:10 25 method that you used?

03:02:11 1 **A** I don't recall the page number, no.

03:02:13 2 **Q** Before I show it to you, I'll ask you to turn to page
03:02:17 3 9, and tell me if that refreshes your recollection. It's
03:02:29 4 the footnote to chart number 6.

03:02:35 5 **A** Yes, I have it now.

03:02:36 6 **Q** Does that refresh your recollection of where you found
03:02:38 7 the method of identifying doctor shoppers according to the
03:02:42 8 Board of Pharmacy?

03:02:42 9 **A** Yes. There's no page number, but it's in the Section
03:02:46 10 4 of the report.

03:02:47 11 **Q** Is it a page that looks like this, what I've got on
03:02:50 12 the screen?

03:02:50 13 **A** Yes.

03:02:52 14 **Q** I'll call out this footnote underneath the chart.

03:02:58 15 It reads, "In this chart, a doctor shopper is defined
03:03:02 16 as an individual receiving a prescription for a controlled
03:03:05 17 substance from five or more prescribers in one calendar
03:03:07 18 month."

03:03:08 19 Do you see that?

03:03:09 20 **A** Yes, I do.

03:03:09 21 **Q** Did you take that method and apply it to data in this
03:03:15 22 case?

03:03:15 23 **A** Yes, we did.

03:03:16 24 **Q** And did you prepare a table that reflects the results
03:03:22 25 of that analysis?

03:03:22 1 **A** Yes.

03:03:22 2 **Q** Is this that table?

03:03:31 3 **A** Yes, it is.

03:03:32 4 **Q** What does this table show with respect to this Ohio

03:03:39 5 Board of Pharmacy method of identifying doctor shoppers?

03:03:42 6 **A** It shows the number of prescriptions that would have
03:03:47 7 been flagged or that would flag by applying the rule -- or
03:03:52 8 the -- I'm sorry, the description that the Board of Pharmacy
03:03:56 9 provided for doctor shopping.

03:03:57 10 **Q** And specifically, what were the results for Walgreens?

03:03:59 11 **A** A very, very small percentage of transactions. I
03:04:05 12 think in total across the 7 or 800,000 opioid prescriptions
03:04:10 13 that were filled, I believe that sums up to about 54
03:04:18 14 transactions over 7 or 800,000.

03:04:19 15 **Q** Is what we're seeing here a count for each of the
03:04:22 16 Walgreens stores in both Lake and Trumbull Counties?

03:04:25 17 **A** Yes.

03:04:26 18 **Q** For some of those stores, it looks like four of them,
03:04:29 19 were there zero prescriptions that flagged?

03:04:31 20 **A** That's correct.

03:04:32 21 **Q** And tell us again overall what the percentage was.

03:04:35 22 **A** It's .01 percent in the aggregate.

03:04:43 23 MS. SWIFT: Thank you, Mr. Brunner. That's
03:04:45 24 all I have at this time.

03:04:46 25 THE COURT: Okay. Ladies and gentlemen, we

03:04:47 1 will take our afternoon break, 15 minutes. The usual
03:04:51 2 admonitions. And then we'll have further questioning of
03:04:56 3 Mr. Brunner.

03:19:51 4 (Recess taken at 3:04 p.m.)

03:25:31 5 (Jury present in open court at 3:25 p.m.)

03:25:49 6 THE COURT: All right. Please be seated,
03:25:50 7 ladies and gentlemen.

03:25:53 8 Mr. Brunner, I'd like to remind you you're still under
03:25:56 9 oath.

03:25:57 10 I take it none of the other defendants had any
03:25:59 11 questions?

03:26:00 12 MR. DELINSKY: Nothing, Your Honor.

03:26:02 13 MR. MAJORAS: No, Your Honor.

03:26:03 14 THE COURT: Okay. Then Mr. Lanier, you're up.

03:26:05 15 MR. LANIER: Thank you very much, Your Honor.

03:26:06 16 Good afternoon, ladies and gentlemen.

03:26:07 17 Good afternoon, Mr. -- is it Brunner or "Brunner"?

03:26:12 18 THE WITNESS: It's Brunner like "runner" with
03:26:13 19 a "B" in front.

03:26:14 20 MR. LANIER: Or "gunner" with a "B" in front,
03:26:16 21 either one.

03:26:17 22 THE WITNESS: The double consonant makes the
03:26:19 23 vowel before it short.

03:26:20 24 MR. LANIER: I think that's what they taught
03:26:22 25 me at Texas Tech University in Lubbock, Texas, the Hub of

03:26:26 1 the Plains.

03:26:27 2 THE WITNESS: I lived in Texas for a year. I
03:26:28 3 understand this.

03:26:30 4 - - - - -

03:26:30 5 CROSS-EXAMINATION

03:26:30 6 BY MR. LANIER:

03:26:30 7 Q You say you split your time, speaking of living,
03:26:33 8 between LA and New York City, and you were asked why, and
03:26:37 9 you said "The practice I'm trying to build," dot dot dot.

03:26:40 10 Remember that?

03:26:41 11 A Yes.

03:26:41 12 Q Because you are, you're in the business of trying to
03:26:44 13 build a practice right now, aren't you?

03:26:45 14 A That's correct.

03:26:46 15 Q And building a practice means getting and keeping
03:26:50 16 clients, right?

03:26:52 17 A Among other things, yes.

03:26:55 18 Q And so among other things, you billed not just
03:26:58 19 \$720,000 in this case, but you've kept five to ten more
03:27:01 20 people busy as well, correct?

03:27:03 21 A Not at my firm, no. Those are people at FTI.

03:27:07 22 Q At FTI, which is a firm where you were?

03:27:09 23 A Where I used to work.

03:27:11 24 Q Exactly. And now you've moved, so you've got an
03:27:14 25 ability, if you continue to work in opioid litigation,

03:27:17 1 you've got an ability to continue to get other people to
03:27:20 2 help you do work, don't you?

03:27:21 3 **A** To get other people at my prior employer to work?

03:27:24 4 **Q** No. To get other people at your current employer,
03:27:27 5 sir, to work with you.

03:27:28 6 **A** No, I'm engaged in an individual capacity.

03:27:31 7 **Q** I'm sorry?

03:27:32 8 **A** I'm engaged in a -- my firm is engaged for my
03:27:35 9 individual time.

03:27:36 10 **Q** Oh, I understand they are right now, but aren't you in
03:27:39 11 the future hoping to do more work?

03:27:41 12 **A** This is not the core area of the practice I'm
03:27:46 13 building, investigative.

03:27:47 14 **Q** I'm not fussing that at all, and we're going to show
03:27:50 15 how this is very different than anything you've ever done
03:27:52 16 before in your life.

03:27:53 17 But my question to you is, aren't you trying to build
03:27:56 18 a practice?

03:27:56 19 **A** Yes.

03:27:57 20 **Q** And if you continue to work in this case, you will
03:28:00 21 need to rely on the help of others, won't you?

03:28:03 22 **A** Yes.

03:28:04 23 **Q** Because this is not really your niche, is it?

03:28:11 24 **A** Well, data analytics is my niche, yes.

03:28:15 25 **Q** No data analytics dealing with issues in this case.

03:28:17 1 Red flags, that's not your niche, is it?

03:28:20 2 **A** I've done volumes and volumes of work associated with
03:28:23 3 red flags in other industries. For example, any money
03:28:27 4 laundering monitoring platforms.

03:28:28 5 **Q** A lot of pharmaceutical red flags in money laundering?

03:28:32 6 **A** No, but red flag applications are red flag
03:28:34 7 applications.

03:28:34 8 **Q** Actually, we'll see if that's true. But let's
03:28:37 9 first -- you're assuming that to be the case, fair?

03:28:40 10 **A** They're analytics.

03:28:43 11 **Q** Pharmacy background, do you have it?

03:28:44 12 **A** No, I don't.

03:28:50 13 **Q** Prescription background, do you have it?

03:28:53 14 **A** No, I don't.

03:28:53 15 **Q** For that matter, using Table 10 on Method 2 to find
03:28:56 16 out if doctor shopping happens, is that a specialty of
03:29:03 17 yours?

03:29:03 18 **A** To the extent that the methodology is specifically
03:29:06 19 outlined, I can implement that process.

03:29:08 20 **Q** Wasn't my question.

03:29:09 21 Is that your expertise? Have you ever done it before?

03:29:13 22 **A** No, I have not.

03:29:13 23 **Q** Did the Ohio Board of Pharmacy call on you to do it?

03:29:17 24 **A** No, they did not.

03:29:17 25 **Q** Did the DEA call on you to do it?

03:29:19 1 **A** No, they did not.

03:29:20 2 **Q** Has any Board of Pharmacy in the 50 United States of
03:29:25 3 America called on you to do it?

03:29:25 4 **A** No, they did not.

03:29:26 5 **Q** First time you've done it is when you've been paid to
03:29:30 6 do it by these -- by Walgreens, I guess at least, right?

03:29:33 7 **A** The first time I'm doing it in connection with the --

03:29:37 8 **Q** Statistician, do you have any graduate degrees in
03:29:41 9 statistics?

03:29:41 10 **A** Not in my -- my bachelor' degree is in economics,
03:29:45 11 which includes statistics.

03:29:46 12 **Q** I've got a minor in economics. I took a statistics
03:29:50 13 class, and that's enough to teach me I ain't a statistician.

03:29:53 14 Do you have a statistics degree, a major in
03:29:55 15 statistics?

03:29:55 16 **A** No, I don't.

03:29:56 17 **Q** Controlled substance, are you a controlled substance
03:30:01 18 expert on helping people with controlled substances?

03:30:04 19 **A** Absolutely not.

03:30:05 20 **Q** Narcotic investigations, are you an expert in that?

03:30:11 21 **A** Negative.

03:30:13 22 **Q** Are you an expert in red flag law -- and I want to
03:30:16 23 specify here -- dealing with controlled substances?

03:30:24 24 **A** Negative.

03:30:29 25 **Q** Red flag interpretation, dealing with controlled

03:30:33 1 substances, expert?

03:30:34 2 **A** Negative.

03:30:38 3 **Q** PMPs and the Ohio PMP, OARRS, do you claim expertise
03:30:45 4 in that before this case?

03:30:46 5 **A** Negative.

03:30:46 6 **Q** ARCOS data, working with that, do you have an ARCOS
03:30:56 7 data background before hired to work in this case?

03:30:57 8 **A** Negative.

03:31:02 9 **Q** And so with that layer of expertise --

03:31:04 10 **A** If I might amend that.

03:31:07 11 **Q** I'm sorry, sir?

03:31:08 12 **A** If I might amend that response. I've worked with it
03:31:12 13 in other cases prior to beginning work on Lake and Trumbull
03:31:15 14 County.

03:31:15 15 **Q** Oh, yeah, yeah, yeah, yeah, yeah. They hired you to
03:31:18 16 testify in New York, they hired you to testify in West
03:31:21 17 Virginia. That's all part of the opioid testimony you're
03:31:24 18 giving for them, right?

03:31:25 19 MS. SWIFT: Objection, Your Honor.

03:31:29 20 THE COURT: Overruled.

03:31:31 21 **A** Can you repeat the question?

03:31:32 22 **Q** Yeah.

03:31:32 23 You've already been hired by them and testified in New
03:31:35 24 York for them and West Virginia, right?

03:31:37 25 MS. SWIFT: Same objection.

03:31:38 1 **A** Yes.

03:31:38 2 **Q** Which one?

03:31:39 3 THE COURT: Let's -- hold it. Let's go on the
03:31:41 4 headphones a minute.

03:31:42 5 MR. LANIER: Judge, I'll withdraw it in the
03:31:44 6 interest of time and just move a different route.

03:31:46 7 THE COURT: All right. Withdrawn.

03:31:48 8 BY MR. LANIER:

03:31:48 9 **Q** Did you offer an expert opinion in the New York opioid
03:31:51 10 litigation?

03:31:51 11 **A** Yes, I did.

03:31:52 12 **Q** Okay. And I'm assuming when you gave us your billings
03:31:54 13 you included all of the opioid work you're doing, didn't
03:31:58 14 you?

03:31:58 15 **A** That's correct.

03:31:58 16 **Q** All right. So ARCOS data background, my question to
03:32:01 17 you is, did you have any of that before you got hired in the
03:32:05 18 opioid litigation that's pending right now?

03:32:10 19 **A** No, I did not.

03:32:11 20 **Q** Thank you, sir.

03:32:12 21 And so when you get asked questions like what method
03:32:15 22 did you use, and Ms. Swift says what method did you use to
03:32:21 23 compute the doctor shopping, and she references this report;
03:32:25 24 remember that?

03:32:26 25 **A** Yes.

03:32:26 1 Q You didn't know which page to turn to, did you?

03:32:29 2 A Not off the top of my head. I believe it's referenced
03:32:31 3 specifically in my expert report.

03:32:33 4 Q And she has to turn the page to page 9 for you, and
03:32:37 5 then you don't know where to go on the page, do you?

03:32:39 6 A I know where it is.

03:32:41 7 Q Well, you know now because she pointed to you and said
03:32:44 8 you can look at the footnote down there if that refreshes
03:32:46 9 your recollection.

03:32:47 10 Remember that?

03:32:49 11 A I recall that.

03:32:50 12 Q And then you were like, oh, yes.

03:32:52 13 And as she said, is this what you did, your answer
03:32:55 14 would typically be, "we" did that, because you had other
03:32:59 15 people do this work, didn't you?

03:33:03 16 A Other people may have performed individual portions of
03:33:08 17 my work, much of which, if not all of which, I've recreated
03:33:11 18 myself as a means of quality control to confirm that we got
03:33:14 19 the right answer.

03:33:14 20 Q In other words, the reason I said "we" is because
03:33:18 21 "someone else did that work for me," right?

03:33:19 22 A Sometimes, yes.

03:33:20 23 Q Okay. Next question -- or next set of questions are
03:33:25 24 off your road map. I want to do three quick stops with you,
03:33:29 25 and they're not going to take long, I hope. All right?

03:33:31 1 First stop is Relianceville. You see it?

03:33:36 2 **A** I do.

03:33:37 3 **Q** Then we're going to do some comparisons and look at
03:33:40 4 some of the comparisons you've already made and some
03:33:43 5 comparisons you didn't make. Okay?

03:33:45 6 **A** All right.

03:33:45 7 **Q** And then we're going to talk about bad doctors in the
03:33:49 8 counties at issue in this case. All right?

03:33:52 9 **A** Okay.

03:33:53 10 **Q** So let's commence with reliance.

03:34:02 11 Now, you've got a number of different exhibits that
03:34:04 12 you were shown by Ms. Swift, and I've put an example of them
03:34:07 13 up here.

03:34:09 14 Do you see that example?

03:34:10 15 **A** Yes, I do.

03:34:10 16 **Q** And this example's got a nice footnote down at the
03:34:14 17 bottom, doesn't it?

03:34:15 18 **A** Yes, it does.

03:34:15 19 **Q** This is where you get your data from, isn't it?

03:34:18 20 **A** That's correct.

03:34:18 21 **Q** You can say all you want about Craig McCann, who's got
03:34:25 22 a Ph.D. in this stuff, but say what you want, you still use
03:34:33 23 his data, don't you?

03:34:34 24 **A** Yes, I did.

03:34:34 25 **Q** So you find him to be reliable when you need to use

03:34:38 1 the data, don't you?

03:34:41 2 **A** When we did our comparisons of the ARCOS data, we
03:34:45 3 identified that, subject to a few minor adjustments upon
03:34:49 4 which Dr. McCann and I agree, that that's a reliable basis
03:34:52 5 of data to do the work.

03:34:53 6 **Q** And now you're saying "we" again because it wasn't you
03:34:56 7 that actually did the work, right?

03:34:59 8 **A** In that context I'm not sure. I may well have done
03:35:02 9 that individually myself. I don't recall.

03:35:04 10 **Q** So when Ms. Swift is saying "you did this, you did
03:35:10 11 this," that's the "you" that we use in Texas as "y'all."
03:35:13 12 Y'all did this. It wasn't you specifically, right?

03:35:15 13 **A** Y'all sometimes refers to an individual as well.

03:35:17 14 **Q** Not where I come from, sir. There is some places in
03:35:21 15 East Texas where they'll say "all y'all" if they want it to
03:35:25 16 be everybody, but where I come from, y'all is just second
03:35:27 17 person plural, all right?

03:35:29 18 What I'm driving at is, you go to McCann, or your
03:35:33 19 people do, on this data, correct?

03:35:36 20 **A** We went to an agreed-upon data set effectively, which
03:35:40 21 we --

03:35:40 22 **Q** No, look at the next --

03:35:42 23 MS. SWIFT: Objection. Can he finish his
03:35:43 24 answer, please?

03:35:44 25 THE COURT: All right. I agree.

03:35:46 1 MR. LANIER: My fault, Judge.

03:35:47 2 THE COURT: Mr. Brunner, please finish your
03:35:48 3 answer.

03:35:48 4 **A** We went to an agreed-upon data set. His data matched
03:35:52 5 the information provided by DEA subject to a few small
03:35:57 6 adjustments, and we agreed that was a valid data set.

03:36:00 7 **Q** So you don't say that, you say it's McCann's adjusted
03:36:05 8 DEA ARCOS data. It's what he adjusted from the DEA,
03:36:08 9 correct?

03:36:09 10 **A** There are adjustments that we agreed to, and it's
03:36:12 11 easier just to cite back to his data than to --

03:36:14 12 **Q** Because y'all didn't have the data, did you?

03:36:16 13 MS. SWIFT: Objection. He wasn't finished
03:36:18 14 with his answer again.

03:36:19 15 THE COURT: All right. Mr. Lanier, just slow
03:36:21 16 down a minute and make sure Mr. Brunner finishes his answer.

03:36:25 17 MR. LANIER: All right.

03:36:25 18 **Q** Y'all didn't independently analyze the data, did you?

03:36:29 19 **A** Yes, we did, quite extensively.

03:36:31 20 **Q** Then why don't you cite your own work instead of
03:36:33 21 McCann's?

03:36:35 22 **A** Less -- it's easier because his adjustments to the
03:36:39 23 data we agreed to, we used his data set. Less room for
03:36:46 24 there to be controversy or conflict.

03:36:48 25 **Q** Next page, same thing. You're using his adjusted

03:36:51 1 data, aren't you?

03:36:52 2 **A** That's correct.

03:36:52 3 **Q** And we'll look at these to see some other issues with
03:36:56 4 them later on. But so we're clear, this market share
03:37:00 5 analysis you're doing by MME, this is not based on
03:37:06 6 dispensing the drugs. This is based on the distribution
03:37:10 7 that's coming into the pharmacies from the wholesaler, the
03:37:14 8 middle man, right?

03:37:15 9 **A** It's based on -- it's the same analysis. If
03:37:20 10 Dr. McCann were to present them, he'd show those same exact
03:37:23 11 numbers because it's based on the purchases by the
03:37:25 12 pharmacies.

03:37:25 13 **Q** Is that a yes or a no answer?

03:37:29 14 I said this is not based on dispensing data, the
03:37:33 15 pharmacies selling it. It's based on the numbers that get
03:37:35 16 shipped into the pharmacists, right?

03:37:37 17 **A** That's correct.

03:37:37 18 **Q** And that means that it ends as of 2014. It's a very
03:37:43 19 limited time period of data, correct?

03:37:49 20 **A** That's correct.

03:37:49 21 **Q** All right. So if we continue to look at the reliance
03:37:57 22 stop, Relianceville as I'm calling it, have you ever met
03:38:00 23 Craig McCann, Dr. McCann?

03:38:01 24 **A** No.

03:38:02 25 **Q** But you are going to use his ARCOS data, correct?

03:38:07 1 **A** Yes.

03:38:08 2 **Q** And in that regard, you were asked a lot of questions
03:38:15 3 about red flags.

03:38:18 4 Now, you understand how a red flag works in the
03:38:22 5 pharmaceutical world?

03:38:24 6 **A** I'm not sure that I do.

03:38:26 7 **Q** When I asked you if you had red flag expertise, you
03:38:30 8 said red flags are red flags regardless of the field.
03:38:34 9 Remember?

03:38:36 10 **A** So technically, a red flag, as I said, of criteria
03:38:39 11 applied against transactions. So in that context, I know
03:38:42 12 what red flags are. I don't know how specifically they're
03:38:45 13 used in the pharmaceutical field.

03:38:47 14 **Q** Exactly. So all of your testimony about red flags is
03:38:53 15 done without you really understanding their purpose inside
03:38:56 16 the pharmaceutical field, fair?

03:38:59 17 **A** That's fair.

03:39:00 18 **Q** And so if their purpose is simply to draw the
03:39:05 19 pharmacist's attention to a situation to see whether or not
03:39:08 20 it might be a problem, that's foreign to you, isn't it?

03:39:14 21 **A** Correct.

03:39:14 22 **Q** And if you want to err when it comes to red flags, and
03:39:21 23 in the pharmaceutical world you'd rather have more
03:39:24 24 identified than less, because you can always deal with the
03:39:30 25 red flags, that's foreign to you, isn't it?

03:39:34 1 **A** Not something I considered.

03:39:35 2 **Q** Not something you considered?

03:39:38 3 **A** That's correct.

03:39:38 4 **Q** Now, you took Dr. McCann to task because he put a fill

03:39:47 5 time into one of the fields, how many of these were filled

03:39:52 6 within an hour together.

03:39:56 7 Remember?

03:39:56 8 **A** Yes, I do.

03:39:57 9 **Q** And you took him to task and said that would be wrong,

03:39:59 10 wouldn't it?

03:40:00 11 **A** Loading an arbitrary fill time for them, yes, I did

03:40:03 12 say that was wrong.

03:40:03 13 **Q** All right. I want to see if I can change your mind

03:40:05 14 real quick, okay?

03:40:07 15 **A** Okay.

03:40:07 16 **Q** All right. So let's talk about Walgreens.

03:40:13 17 What are the options that you and Dr. McCann have when

03:40:17 18 Walgreens just doesn't fill in the time half the time?

03:40:22 19 You with me?

03:40:23 20 **A** Yeah, I am.

03:40:24 21 **Q** So you've got some options. One option is just ignore

03:40:28 22 it. That's what you did, right?

03:40:31 23 **A** No.

03:40:32 24 **Q** You said, I just didn't use that factor. Remember?

03:40:36 25 **A** It would be to exclude those transactions where the

03:40:40 1 time was not populated --

03:40:42 2 **Q** That's what I mean.

03:40:44 3 **A** -- from any analysis that relied on the time field --
03:40:50 4 the time filled field being populated.

03:40:52 5 **Q** Okay. That's all I'm driving at.

03:40:54 6 So one option is you just exclude it. And if three
03:40:58 7 people came in in the same hour and it just wasn't
03:41:00 8 documented, free ride for the company on that one, right?

03:41:05 9 **A** I wouldn't say free ride. I would say they should --
03:41:07 10 they cannot be part of an analysis upon -- that relies on
03:41:13 11 the time dispensed as a critical factor.

03:41:15 12 **Q** So free ride.

03:41:16 13 I mean, look, let's be real world about this for a
03:41:19 14 moment, okay?

03:41:20 15 Three people go in, same prescription, same strength,
03:41:25 16 same doctor, and they go in between 12 noon and 12:30.

03:41:33 17 You got it?

03:41:35 18 **A** Are those the dates that are appropriately reflected
03:41:38 19 contemporaneously, like at the time they actually came in,
03:41:42 20 or are those just hypothetical times?

03:41:44 21 **Q** I'm just doing a hypothetical.

03:41:46 22 Three people come in between noon and 12:30, same
03:41:49 23 doctor, same prescription, same day. You got me?

03:41:52 24 **A** As a hypothetical, yes.

03:41:55 25 **Q** And the pharmacy just, eh, they don't fill in the

03:42:00 1 time, and so there's no time signature for these three.

03:42:04 2 You got me?

03:42:05 3 **A** I do.

03:42:05 4 **Q** Then when you approach this problem, you're going to
03:42:08 5 say you can't trigger a red flag even though it should have
03:42:11 6 triggered because the pharmacy didn't do their homework
03:42:16 7 right. Correct?

03:42:16 8 **A** That's not what I would say. First of all, I don't
03:42:20 9 know if the data's not populated because of a system issue
03:42:22 10 and perhaps the data wasn't even captured back then.

03:42:26 11 **Q** Oh, it was captured. So let's don't make excuses for
03:42:30 12 them because you don't have the basis to make an excuse.
03:42:32 13 Fair?

03:42:32 14 MS. SWIFT: Objection, Your Honor.

03:42:33 15 THE COURT: Well, I'll sustain that.

03:42:36 16 **Q** Okay. Sir, you don't have the basis to make excuses
03:42:39 17 for them. You don't know. True?

03:42:40 18 **A** I do not know.

03:42:42 19 **Q** So you give those people a free ride, and you don't
03:42:47 20 count them if you just ignore every time a time entry is not
03:42:52 21 entered, true?

03:42:53 22 **A** If I'm doing an analysis that's based on time and we
03:42:56 23 don't have actual entries of time for them, they cannot be
03:43:00 24 included in the time, in the analysis.

03:43:02 25 **Q** Or you could do number 2. You could approximate. You

03:43:07 1 could say, here's the half where they do do time, and we can
03:43:10 2 see how that time spreads out and figure statistically it
03:43:13 3 may be the same. I mean, that may be kind of loosey-goosey,
03:43:18 4 but you could do that, right?

03:43:22 5 **A** There are methods where you could project something,
03:43:25 6 but then it would still not be sufficient to be used to
03:43:30 7 definitively identify something. There's always an error
03:43:32 8 rate anytime one projects data like that or guesstimates.

03:43:36 9 **Q** No question. No question. There's always an error
03:43:40 10 rate. But a projection is a legitimate way of doing it,
03:43:44 11 correct?

03:43:45 12 **A** In certain circumstances, and I wouldn't do it where
03:43:48 13 specific timing down to matter of minutes is missing.

03:43:53 14 **Q** There's a third option, and that is to give a range
03:43:56 15 and to see it's going to be somewhere between zero and 100
03:44:03 16 percent, right?

03:44:10 17 **A** As to estimating the impacts on the overall
03:44:13 18 population, that might be valid. Dr. McCann projected --
03:44:18 19 gave a range of 100 percent to 100 percent.

03:44:20 20 **Q** No, you weren't here for his testimony. He set it out
03:44:24 21 very clearly. He said the zero is easy to compute. So it's
03:44:27 22 somewhere between zero and 100 percent, and then he told the
03:44:30 23 jury what the statistical difference was for them to
03:44:33 24 calculate.

03:44:34 25 Did you not know that?

03:44:35 1 **A** I did not. I haven't reviewed his testimony.

03:44:38 2 **Q** All right. Next, you talk about overlapping red flags
03:44:49 3 and the problem with overlapping prescriptions.

03:44:53 4 Remember?

03:44:53 5 **A** Yes, I do.

03:44:54 6 **Q** And you said the problem is Dr. McCann tripped these
03:44:58 7 by looking at the first prescription date that it was
03:45:01 8 written.

03:45:01 9 Remember?

03:45:02 10 **A** That's correct.

03:45:02 11 **Q** Okay. Well, you have to have the first flag for it to
03:45:10 12 overlap, don't you?

03:45:11 13 **A** No, you have to have identified the first transaction
03:45:13 14 in order to flag the triggering transaction, the later
03:45:17 15 transaction.

03:45:17 16 **Q** Right. That's what he did. Did you not understand
03:45:20 17 that?

03:45:20 18 **A** No, he flagged the first transaction and the second
03:45:25 19 transaction.

03:45:25 20 **Q** Because those are the two that overlap.

03:45:28 21 You understand?

03:45:29 22 **A** But at the time, my understanding is if one were to
03:45:35 23 look at what was available at the time, there would be no
03:45:39 24 reason for anyone to flag that first transaction.

03:45:43 25 **Q** And he only flagged the first transaction if there was

03:45:45 1 a second one within an overlapping time period.

03:45:48 2 Did you not get that?

03:45:49 3 **A** I understand why he flagged the second one.

03:45:52 4 **Q** I mean, if I wanted to ask you how many times Baker
03:45:56 5 Mayfield throws two touchdowns in a Browns game, I'm sure in
03:46:02 6 Southern California -- you're probably a Cleveland Browns
03:46:04 7 fan at least for today, right?

03:46:06 8 **A** Buffalo Bills fan actually. Sorry.

03:46:10 9 **Q** Well, you need to be.

03:46:16 10 If I want to know how many games he throws two
03:46:19 11 touchdowns in, I better count the first touchdown, don't you
03:46:23 12 think?

03:46:26 13 **A** To be able to count, yes.

03:46:29 14 **Q** If I get the second touchdown and ignore the first
03:46:33 15 one, I'm not going to get a very good stat, am I?

03:46:35 16 **A** Actually, if you want to count the number of games in
03:46:37 17 which Baker Mayfield threw two touchdowns and he threw two
03:46:41 18 touchdowns yesterday, you're going to count that once.

03:46:44 19 **Q** That's exactly right. I'm not fussing that, but to do
03:46:47 20 that --

03:46:48 21 **A** One game, he threw two touchdowns one time.

03:46:51 22 **Q** To do that, you've got to count both, don't you?

03:46:54 23 **A** In --

03:46:58 24 **Q** In the statistics column, you better have two
03:47:00 25 touchdowns down there, count the first and the last -- or

03:47:03 1 second, right?

03:47:03 2 **A** Yes, that's correct. But for purposes of flagging
03:47:08 3 activity here, it's only the second that caused the issue.

03:47:11 4 **Q** Sorry.

03:47:13 5 If you're playing tic-tac-toe, you better count the
03:47:16 6 first X if you're going to count three in a row, right?

03:47:20 7 **A** I would agree.

03:47:22 8 **Q** By the way, you gave a 30 percent and said, eh, this
03:47:28 9 messes up 30 percent of the numbers.

03:47:30 10 You're not talking 30 percent of the total of all of
03:47:33 11 the prescriptions. You're talking within the designation of
03:47:36 12 that red flag, fair?

03:47:37 13 **A** I was talking about the number of transactions that
03:47:40 14 received the red flag --

03:47:42 15 **Q** Thank you.

03:47:43 16 **A** -- that were in error, yeah.

03:47:44 17 **Q** And then at one point you took it up to 68 percent for
03:47:47 18 something else, right?

03:47:48 19 **A** That was for red flag number 9.

03:47:51 20 **Q** Uh-huh.

03:47:51 21 **A** The 30 percent was for red flag number 3.

03:47:56 22 **Q** And the other side of that coin is, if Walgreens
03:47:58 23 doesn't flag it, then they miss 68 percent, don't they?

03:48:08 24 **A** I'm sorry, which -- so if you go to your previous
03:48:11 25 bullet point, the 68 percent is referring to the errors.

03:48:16 1 Q Yeah, I'm saying, look, if you don't -- take the 30
03:48:20 2 percent down, I don't care which one. If you don't flag it,
03:48:24 3 then Walgreens doesn't catch it. Right?

03:48:28 4 A I don't know what's done with the flagged
03:48:33 5 transactions.

03:48:33 6 Q That's out of your area?

03:48:34 7 A I just know that Dr. McCann's reporting and his
03:48:40 8 production of those transactions that were flagged in that
03:48:42 9 method, 30 percent of them should not have been flagged.

03:48:44 10 Q Now, let's look at some interesting math you did,
03:48:48 11 okay?

03:48:50 12 A Okay.

03:48:55 13 Q You said in reference to this exhibit --

03:48:59 14 MR. LANIER: And this exhibit, Your Honor, is
03:49:00 15 slide number 4 from the demonstratives that were used with
03:49:06 16 Carmen Catizone, for the record.

03:49:08 17 Q Do you remember your questions from Ms. Swift
03:49:11 18 concerning this?

03:49:11 19 A Yes.

03:49:11 20 Q She asked you if that 61 percent of 1,237 were blank,
03:49:18 21 if that was true or false. And you said that's false,
03:49:23 22 didn't you?

03:49:24 23 A Yes, I did.

03:49:24 24 Q You're not telling the whole story behind your
03:49:28 25 testimony now, are you?

03:49:30 1 **A** I'm not sure I follow.

03:49:32 2 **Q** All right. Let's zoom in on this.

03:49:38 3 This is based on 2,000 sample notes.

03:49:43 4 Do you see that?

03:49:44 5 **A** 2,000 sample transactions, yes.

03:49:46 6 **Q** And Carmen Catizone, physically with his eyeballs,
03:49:51 7 looked at all of them and found 1,237 to be blank across
03:49:57 8 these comment fields.

03:49:58 9 Do you see that?

03:49:59 10 **A** I do.

03:50:00 11 **Q** His comment fields were the relevant note fields.

03:50:05 12 Do you see that?

03:50:06 13 **A** I do.

03:50:06 14 **Q** And you don't know what a relevant note is to a
03:50:11 15 pharmacist, do you?

03:50:13 16 **A** No, I do not. I know the population of comments
03:50:17 17 fields available and the percentages of population for
03:50:20 18 those.

03:50:20 19 **Q** Oh, I know, I saw you had like how many fields were
03:50:23 20 blank for the doctor's address or for pregnancy or for
03:50:29 21 patient allergies, and things like that. Right?

03:50:31 22 **A** Among other things, yes.

03:50:32 23 **Q** But relevant notes fields, you don't know what those
03:50:37 24 are, do you?

03:50:38 25 **A** I'm not qualified to make a judgment of that.

03:50:40 1 Q And not only are you not qualified, then, to make a
03:50:43 2 judgment on whether he's right or wrong, you've gone and
03:50:47 3 done something a bit more tricky, haven't you?

03:50:52 4 MS. SWIFT: Objection, Your Honor.

03:50:54 5 MR. LANIER: I'll change my wording.

03:50:55 6 THE COURT: Yes.

03:50:56 7 Q You've done something different, haven't you?

03:51:03 8 A I'm not sure what you mean.

03:51:05 9 Q Well, what I mean is you went and pulled up the
03:51:10 10 historical files associated with these patients, didn't you?

03:51:15 11 A We looked at the expanded patient histories for every
03:51:19 12 one of those transactions, yes.

03:51:19 13 Q In other words, you're looking at 155,000
03:51:25 14 prescriptions, aren't you?

03:51:27 15 A Yes.

03:51:27 16 Q So when you sit there and say that only 75 percent
03:51:35 17 are -- well, that's prescriber location comment. That's
03:51:39 18 where the prescriber's located.

03:51:41 19 Whatever it may be, from your .10 to your 74.85, all
03:51:48 20 of that's not based on 2,000. That's based on 155,957
03:52:05 21 prescriptions and notes fields, right?

03:52:07 22 A Correct.

03:52:08 23 Q And so when you tell this jury that there were
03:52:18 24 actually 1,497 you found, is that what you were saying?

03:52:30 25 You say you found 1,497 filled in, as opposed to 1,237

03:52:38 1 blank, didn't you?

03:52:42 2 **A** Can you show me the other chart that we just --

03:52:51 3 **Q** 1,497?

03:52:53 4 **A** Yes.

03:52:53 5 **Q** See it?

03:52:54 6 **A** Yes.

03:52:54 7 **Q** That's not out of 2,000 prescriptions. That's out of
03:53:01 8 155,000 prescriptions, isn't it?

03:53:05 9 MS. SWIFT: Objection, Your Honor.

03:53:08 10 Mischaracterizes.

03:53:08 11 THE COURT: Overruled.

03:53:09 12 **A** Of the 2,000 sampled prescriptions, 1,497 of them had
03:53:14 13 a prescriber location comment in their expanded patient
03:53:18 14 histories.

03:53:18 15 **Q** In other words -- no, no, no, no. Let's be really
03:53:21 16 clear on this.

03:53:24 17 Carmen Catizone looked at 2,000 prescriptions, right?

03:53:34 18 **A** Yes.

03:53:34 19 **Q** And out of those 2,000 prescriptions, his testimony
03:53:39 20 was 61 percent were blank across relevant fields. And that
03:53:49 21 was 1,237, right?

03:53:54 22 **A** Okay.

03:53:54 23 **Q** You following me?

03:53:57 24 **A** I am.

03:53:58 25 **Q** And then what you did is you said, well, okay, that

03:54:06 1 may be true, but I'm going to go back and look at every
03:54:10 2 other prescription that these same patients ever had filled,
03:54:16 3 right? Right?

03:54:20 4 **A** We considered all of the data that was produced
03:54:23 5 relevant to the sample transactions, not just the 2,000 that
03:54:28 6 doctor -- yeah, that Dr. Catizone considered.

03:54:33 7 **Q** In other words, correct, Mark, I'm going to go back
03:54:35 8 and look at all of the expanded patient history and other
03:54:39 9 prescriptions, correct?

03:54:40 10 **A** That's correct.

03:54:41 11 **Q** And so your number of sample records isn't 2,000.
03:54:46 12 Your number is 155,000 plus, isn't it?

03:54:51 13 MS. SWIFT: Objection. Mischaracterizes.

03:54:52 14 THE COURT: Overruled.

03:54:54 15 **A** It's -- my understanding is that that's the complete
03:54:57 16 patient histories, and those patient histories are relevant
03:55:01 17 to the sample transaction.

03:55:04 18 **Q** That's not my question, sir. My question is, when you
03:55:07 19 come up with your number of 1,497, you're getting your
03:55:14 20 number out of that 155,000 other prescriptions, aren't you?

03:55:21 21 **A** As they relate to the 2,000.

03:55:25 22 **Q** Yeah, they're prescriptions -- different prescriptions
03:55:29 23 of the same patient, right?

03:55:30 24 **A** That's correct.

03:55:31 25 **Q** So different prescriptions. And there, why don't you

03:55:36 1 tell the jury what percentage are blank. If you use 1,497
03:55:44 2 out of a denominator of 155,000, what percentage do you find
03:55:51 3 blank?

03:55:51 4 **A** That's an irrelevant number.

03:55:52 5 **Q** That wasn't my question, sir, because I think it's
03:55:55 6 dead on relevant.

03:55:56 7 What's the percentage?

03:55:57 8 **A** So of those 1,497 patients -- or of the sample
03:56:05 9 transactions, some of them may have had many, many, many,
03:56:08 10 many comments. I don't know off the top of my head. It
03:56:11 11 could be 120,000 that actually -- 120,000 records that
03:56:16 12 actually had comments in them that all boiled down to the
03:56:20 13 1,497 in the sample.

03:56:22 14 I don't know the answer to that. It could be 150,000,
03:56:25 15 could be 120,000. I don't know that.

03:56:27 16 **Q** You may have done the wrong math here. You may have
03:56:30 17 the wrong figures, but let's use your figures anyway and
03:56:34 18 tell the jury the percentage.

03:56:35 19 1,497 over 155,957 equals what over 100?

03:56:43 20 MS. SWIFT: Objection, Your Honor. Could we
03:56:45 21 go to a side bar, please?

03:56:47 22 THE COURT: No, overruled. Overruled.

03:56:52 23 **Q** Can you answer that, sir.

03:56:58 24 Do you have a calculator?

03:56:59 25 **A** I have my phone, yes.

03:57:00 1 Q That's super.

03:57:14 2 You got the answer?

03:57:15 3 A If I do the 2,000 divided by the 155, that's, you
03:57:20 4 know, 1.2 percent. If do I --

03:57:23 5 Q Sir, can you do the math that I've asked you to do?

03:57:26 6 A That's .96 percent.

03:57:55 7 Q So if you have only 1,497 filled out of 155,000, then
03:58:04 8 you've got 99 percent blank instead of the 61 percent,
03:58:09 9 wouldn't you?

03:58:10 10 A But the 1,497 is not the number of records of
03:58:16 11 prescriptions that had comments in them.

03:58:18 12 Q Sir, I'm going to get to that in a moment, but we're
03:58:25 13 going to do it step by step, please.

03:58:27 14 If we take what you were telling the jury was 1,497
03:58:31 15 out of 2,000, even though that 1,497 is coming out of
03:58:37 16 155,000, then you've got, simple math, 99 percent blank
03:58:44 17 fields on prescriber comment location. True?

03:58:49 18 A Absolutely not.

03:58:49 19 Q Sir, if you -- the only reason -- all right.

03:58:58 20 A You're comparing apples and oranges.

03:59:00 21 Q No, sir, I'm asking you a simple math question.

03:59:03 22 I'm giving you an if/then proposition. Do you know
03:59:07 23 what those are?

03:59:07 24 A I do.

03:59:08 25 Q If you look at 155,957 prescriptions --

03:59:15 1 **A** Yes.

03:59:15 2 **Q** -- and if 1,497 are filled in for a certain blank, the
03:59:25 3 prescriber location, then that means not filled in is 99
03:59:33 4 percent. True?

03:59:37 5 **A** The 1,497 is not a valid number to subtract from
03:59:46 6 155,957.

03:59:46 7 **Q** Wasn't my question, sir. Answer my question.

03:59:52 8 If 155,000 prescriptions are looked at and 1,400 of
03:59:57 9 them are filled in in a certain blank, then that means 99
04:00:00 10 percent are not filled in for that blank. True?

04:00:03 11 **A** Your math is not inaccurate; however, you're comparing
04:00:10 12 an apple to an orange.

04:00:13 13 **Q** Well, now, we'll talk about that in a moment.

04:00:16 14 But that's your math and the math is right, isn't it?

04:00:19 15 MS. SWIFT: Objection. Mischaracterizes.

04:00:21 16 **A** That's not my math.

04:00:23 17 THE COURT: Let's move on.

04:00:24 18 **Q** Sir, you say it's apples and oranges?

04:00:28 19 **A** Yes.

04:00:28 20 **Q** Because maybe it's filled in in more than one blank.
04:00:35 21 Maybe you've got other blanks filled in. Fair?

04:00:38 22 **A** Could be that that -- a particular comment field was
04:00:42 23 filled in 97 percent of the time, and that would count as
04:00:45 24 just one of your 1,497.

04:00:47 25 **Q** You just don't know because you didn't eyeball them,

04:00:49 1 right?

04:00:50 2 **A** That's correct.

04:00:51 3 **Q** But at least we know that your figures for your
04:00:55 4 indicting Mr. Catizone and Dr. McCann, you're using figures
04:01:02 5 from 155,000 other prescriptions, aren't you?

04:01:07 6 **A** I'm aggregating those transactions by sample
04:01:16 7 prescription and reporting the results there, yes.

04:01:19 8 **Q** Can you answer my question, please?

04:01:21 9 Here it is.

04:01:21 10 I said, "But at least we know that your figures for
04:01:28 11 indicting Mr. Catizone and Dr. McCann, you're using figures
04:01:30 12 from 155,000 other prescriptions, aren't you?"

04:01:36 13 True?

04:01:38 14 **A** I am looking at the entire expanded patient history of
04:01:42 15 155,000, yes.

04:01:43 16 **Q** Is that a "yes" answer?

04:01:44 17 **A** Yes.

04:01:45 18 **Q** Thank you.

04:01:45 19 Let's talk comparisons, which I guess we've sort of
04:01:48 20 been doing, but I want to throw out a couple more.

04:01:52 21 WAG Demonstrative 29, page 11.

04:01:57 22 Do you remember this one?

04:01:59 23 **A** I do.

04:01:59 24 **Q** Now, again, you're relying upon Craig McCann for this,
04:02:05 25 aren't you?

04:02:05 1 **A** I'm relying on the ARCOS data, yes, as adjusted by
04:02:10 2 McCann.

04:02:10 3 **Q** You're not just that. You're also relying upon his
04:02:13 4 expert report Appendix 10 and his numbers, aren't you?

04:02:16 5 **A** Yes.

04:02:16 6 **Q** But what you've done is you've broken this apart and
04:02:19 7 put all the little Walgreens stores in different lines,
04:02:23 8 haven't you?

04:02:23 9 **A** Just as Dr. McCann did.

04:02:25 10 **Q** Is that a "yes" answer?

04:02:27 11 **A** Yes, just as Dr. McCann did.

04:02:29 12 **Q** Not in front of the jury. He did that so that people
04:02:33 13 can compare store by store in terms of how the production
04:02:37 14 numbers were changing in the trend lines.

04:02:40 15 Did you not understand that?

04:02:41 16 **A** I was not witness to any of his testimony here in
04:02:44 17 court.

04:02:44 18 **Q** So let's be witness to this. If we take this, you've
04:02:50 19 got opioid purchases by the pharmacies, 278 by Overholt's
04:02:58 20 combined with Champion's -- and he didn't combine those; you
04:03:05 21 did, right?

04:03:05 22 **A** That's correct.

04:03:06 23 **Q** So when you say I broke those apart because he did,
04:03:09 24 well, you combined these when he didn't, didn't you?

04:03:11 25 **A** That's correct.

04:03:12 1 Q And then you've got Franklin at 241,000, right?

04:03:16 2 A Also correct.

04:03:17 3 Q And then you've got Walgreens at 238,000, don't you,
04:03:22 4 if you add those stores up?

04:03:26 5 A It's over to the right for the combined -- all 13
04:03:30 6 Walgreens, yes.

04:03:30 7 Q And that's just in Trumbull County.

04:03:32 8 A I'm sorry, all six Walgreens. I apologize.

04:03:34 9 Q Because if you add together with Trumbull County the
04:03:38 10 Walgreens prescriptions in Lake County, you've now got a
04:03:45 11 boatload more, don't you?

04:03:46 12 A There are obviously also Walgreens in Lake County that
04:03:54 13 are not on this chart, yes.

04:03:55 14 Q Well, you've got another 220,000 from Lake County. So
04:04:01 15 at this point, Walgreens in those two counties is pumping
04:04:04 16 out almost twice as many as Overholt's and Franklin.

04:04:08 17 Do you see that?

04:04:11 18 A If one were to add all 13 Walgreens stores, they would
04:04:15 19 be more than either of the individual of those stores, yes.

04:04:19 20 Q Right. But you understand our concern is how many
04:04:21 21 pills are going out on the street, not which store they
04:04:24 22 bought them from, right?

04:04:26 23 A I don't know.

04:04:26 24 Q Well, sir, the question becomes, how many pills are
04:04:30 25 out there on the street from these different stores.

04:04:33 1 Did you not know that's the issue?

04:04:35 2 **A** I know generally what the issue is. I don't know
04:04:38 3 precisely what measurement of -- is going to be used to
04:04:43 4 determine that.

04:04:44 5 **Q** Well, I'll show you Plaintiffs' Exhibit 26321. And
04:04:49 6 this is one of the charts that shows in Lake and Trumbull
04:04:56 7 Counties that Walgreens year by year is putting out what
04:04:59 8 ultimately peaks in 2011 at over 10 pills per person, every
04:05:07 9 man, woman, and child, every infant gets counted, 10 pills
04:05:11 10 per person, all from just Walgreens.

04:05:14 11 Did you know that?

04:05:17 12 **A** I hadn't looked at that. That's the first I'm seeing
04:05:20 13 that.

04:05:21 14 **Q** Yeah, well, that's a lot more pills per person from
04:05:24 15 Walgreens than you're going to get from Overholt's, isn't
04:05:27 16 it?

04:05:27 17 MS. SWIFT: Objection, Your Honor.

04:05:28 18 THE COURT: Overruled.

04:05:29 19 **A** Again, I haven't analyzed that for Overholt's or
04:05:32 20 Franklin, or anyone else.

04:05:33 21 **Q** Which brings me to the last stop, bad doctors.

04:05:39 22 Did you do any work on the bad doctors in this case?

04:05:44 23 **A** Can you define the bad doctors?

04:05:46 24 **Q** Sure. Did you do a pill count for how many pills
04:05:50 25 Walgreens put in the hands of patients of Dr. Franklin?

04:05:55 1 **A** Not pills, no.

04:05:56 2 **Q** How many pills Walgreens put in the hands of the
04:05:59 3 patients of Dr. Veres?

04:06:01 4 **A** Not pills, no.

04:06:02 5 **Q** How many pills Walgreens put in the hands of
04:06:07 6 Dr. Demangone?

04:06:07 7 **A** Negative.

04:06:08 8 **Q** You know, these are doctors in the county. These are
04:06:11 9 Lake and Trumbull doctors. Did you know that?

04:06:14 10 **A** I'll take your word for it.

04:06:15 11 **Q** Dr. Torres, did you do a pill count for how many pills
04:06:20 12 Walgreens put in the hands of his patients?

04:06:22 13 **A** Negative.

04:06:22 14 **Q** Dr. Lazzerini, who got sentenced for overprescribing,
04:06:27 15 do you know how many pills Walgreens filled for his
04:06:29 16 patients?

04:06:29 17 **A** Negative.

04:06:30 18 **Q** Did you look at any of the patients that have been
04:06:33 19 concerns for diverters? I've just listed three, but Carol
04:06:38 20 DiPaola, did you look at how many she got and where they
04:06:40 21 came from?

04:06:41 22 **A** Negative.

04:06:41 23 **Q** Did you take a look at where Douglas Windland's came
04:06:45 24 from?

04:06:45 25 **A** Negative.

04:06:45 1 Q Did you look at where Autumn Ansel's came from?

04:06:48 2 A No, I did not.

04:06:49 3 MR. LANIER: Thank you. I'll pass the
04:06:51 4 witness, Your Honor.

04:06:53 5 THE COURT: Okay. Before redirect, we'll see
04:06:55 6 if any of the jurors have any questions for Mr. Brunner.

04:07:02 7 (Juror question review.)

04:10:05 8 MS. SWIFT: May it please the Court?

04:10:06 9 THE COURT: Yes, Ms. Swift.

04:10:08 10 MS. SWIFT: Good afternoon again, ladies and
04:10:10 11 gentlemen.

04:10:10 12 Mr. Pitts, may I have the ELMO, please?

04:10:15 13 - - - - -

04:10:16 14 REDIRECT EXAMINATION

04:10:16 15 BY MS. SWIFT:

04:10:16 16 Q Mr. Brunner, I have a number of juror questions for
04:10:19 17 you, and I'll go through those first before asking some
04:10:22 18 follow-up questions on redirect. Okay?

04:10:23 19 A Okay.

04:10:24 20 Are you near the microphone? Can you move?

04:10:26 21 Q I'm sorry. Can you hear me now?

04:10:28 22 A Yes.

04:10:28 23 Q I have to lean into it, I guess. I'm just going to go
04:10:31 24 through these one by one. This is the first one.

04:10:35 25 "If a field is left blank during the data analysis,

04:10:39 1 how does this affect the results if the number of blank
04:10:44 2 fields is a significant number? What is the error rate?"

04:10:48 3 **A** So depending on the analysis, if it's just a few
04:10:54 4 relative to the total, then they can safely be excluded and
04:10:57 5 just typically footnoted, and saying this is only the data
04:11:04 6 where that field is populated or that value is populated.

04:11:07 7 If one were to try and put in an error rate on that,
04:11:12 8 you'd want to estimate it by using the number of blank
04:11:16 9 records with a blank value relative to the total number of
04:11:19 10 records.

04:11:28 11 **Q** "What makes Dr. McCann's data incorrect? What makes
04:11:32 12 your data correct? Isn't this just a matter of education,
04:11:35 13 training, and experience?"

04:11:36 14 **A** So largely, Dr. McCann and I agree on the appropriate
04:11:41 15 data to use, which is the ARCOS data, subject to a couple
04:11:45 16 minor little revisions that he and I both agree on. Which
04:11:48 17 is why all, for example, the market share data analytics
04:11:52 18 that we did were all off of his data; less argumentative if
04:11:57 19 we just use his data.

04:11:58 20 So there's -- other than the time issue, and with him
04:12:02 21 filling in a random time for those records where it was
04:12:07 22 missing a time entry, we agree with his ARCOS data. We're
04:12:11 23 using his ARCOS data. There's nothing that makes his
04:12:14 24 analysis and our analysis -- if he were to run the same
04:12:17 25 analytics we did, he would arrive at the same answers.

04:12:25 1 Q "Of the 2,000 in the sample, how many hard copies did
04:12:33 2 you obtain and review?"

04:12:34 3 A So if I recall correctly, there were roughly 1,700 of
04:12:39 4 the -- 1,799, if memory serves, of the 2,000 that were
04:12:45 5 originally presented as hard copy prescriptions. Of those
04:12:51 6 17 -- we'll call them 1,800; of those 1,800, we found 1,246
04:12:57 7 actual hard copies, because they'd been stored in warehouses
04:13:01 8 in Iron Mountain in boxes, or what have you. So 1,246
04:13:05 9 actual physical hard copies were retrieved and reviewed in
04:13:09 10 detail.

04:13:10 11 Q Did you review the hard copies yourself?

04:13:12 12 A Yeah, I looked at all of the hard copies myself.

04:13:14 13 Q "How many times have you been to Lake/Trumbull
04:13:24 14 Counties to gather information?"

04:13:26 15 A I have not been to either Lake or Trumbull County.

04:13:29 16 Q "When you compared your data to Dr. McCann, was the
04:13:34 17 date range exactly the same for both?"

04:13:38 18 A Assuming we're talking about the date -- the date
04:13:42 19 range that the data covered, precisely the same, because it
04:13:47 20 is the same data.

04:13:51 21 Q And maybe just to follow up to that, were there
04:13:54 22 different time frames for different data sets?

04:13:56 23 A Yes, yes. The OARRS data covered a period starting in
04:14:04 24 2010, going to 2018. The ARCOS data was different, which is
04:14:09 25 the market share data, covered a period of 2006 to 2014. So

04:14:15 1 they're slightly different.

04:14:17 2 But Dr. McCann and I agree on what the OARRS data is,
04:14:22 3 what the ARCOS data is, same data. We've made no
04:14:26 4 manipulations or changes to it in either way.

04:14:28 5 **Q** "You stated that the McCann's data was used with some
04:14:33 6 of your adjusted data. What do you mean? What was
04:14:37 7 adjusted?"

04:14:38 8 **A** So there were some slight anomalies in the data here
04:14:41 9 and there. I don't recall specifically. One of them is,
04:14:45 10 like, a month where the ARCOS data was missing some data.
04:14:49 11 We may have -- we adjusted it by putting in some Walgreens
04:14:51 12 data from the Walgreens production. Just some other places
04:14:56 13 where there's some minor issues affecting a couple thousand
04:15:00 14 records, if I'm not mistaken.

04:15:02 15 But he and I agree on exactly what those adjustments
04:15:05 16 should be.

04:15:09 17 **Q** "Why didn't you add all Walgreens' dispensing
04:15:16 18 numbers"?

04:15:16 19 **A** I'm pretty sure I have -- well, for the market share
04:15:23 20 purposes, we did -- we mirrored what Dr. McCann did in his
04:15:30 21 expert report, in one of his appendixes, I think it's
04:15:33 22 Appendix Number 10 to his report, which is where he laid out
04:15:36 23 the market share. And so we wanted to mirror that. So we
04:15:40 24 did our market share analysis, again, from the ARCOS data.

04:15:45 25 **Q** A clarifying question there.

04:15:47 1 Is it your understanding that Dr. McCann concluded
04:15:50 2 that it was more appropriate to use ARCOS data to calculate
04:15:53 3 market share?

04:15:53 4 **A** That's my understanding, yes.

04:15:54 5 **Q** Even for dispensing?

04:15:57 6 **A** I don't know if he used dispensing specifically.

04:16:08 7 **Q** "Did you have a pharmacist review things such as
04:16:12 8 dur_comment to see if what was written in the field was
04:16:15 9 pertinent? In other words, if the comment field said
04:16:18 10 "kitten," did you still count it"?

04:16:20 11 **A** That's a great hypothetical. Be very curious if a
04:16:28 12 pharmacist put "kitten" in there.

04:16:29 13 We did not review the quality of the content of any of
04:16:33 14 the entries in any of the fields. We noted which had a
04:16:36 15 value in there and which did not have a value in there.

04:16:42 16 **Q** All right. I have a few more questions to ask you,
04:16:45 17 Mr. Brunner.

04:16:45 18 Let's see. Mr. Lanier asked you questions about the
04:16:54 19 fact that you in some respects relied on Dr. McCann's
04:16:59 20 adjusted ARCOS data.

04:17:01 21 Do you remember those questions?

04:17:02 22 **A** Yes.

04:17:02 23 **Q** Where you could, did you do that in order to kind of
04:17:06 24 cut through the wheat and the chaff to get to kind of the
04:17:12 25 heart of the matter?

04:17:13 1 **A** Yes.

04:17:13 2 **Q** I think I heard you say you were trying to avoid
04:17:18 3 conflicts, to be less argumentative.

04:17:20 4 What did you mean by that in this context?

04:17:21 5 **A** I mean, if we're looking at the same exact data as
04:17:25 6 Dr. McCann is, then looking for the same things we are
04:17:29 7 likely to find the same exact answer. For example, when I
04:17:32 8 put those pie charts up there, we used his data because he
04:17:38 9 would get the same exact answers that we put up there for
04:17:41 10 those charts.

04:17:43 11 **Q** Now, Mr. Lanier asked you a series of questions about
04:17:45 12 the fact that Dr. McCann inserted an arbitrary fill time,
04:17:53 13 the same fill time of noon, wherever a fill time wasn't
04:17:58 14 included in the data that you received.

04:17:59 15 Do you remember those questions?

04:18:00 16 **A** Yes, I do.

04:18:01 17 **Q** He asked you whether you could have approximated a
04:18:07 18 time instead of leaving that information out.

04:18:09 19 Do you remember that question?

04:18:10 20 **A** I do.

04:18:10 21 **Q** I understand that you didn't approximate a fill time.
04:18:14 22 Did Dr. McCann approximate a fill time?

04:18:17 23 **A** No.

04:18:21 24 **Q** Mr. Lanier also said you could have given a range
04:18:24 25 instead of just leaving out the fill time entirely.

04:18:28 1 Do you remember that?

04:18:29 2 **A** Yes.

04:18:30 3 **Q** And I believe he represented to you what Dr. McCann
04:18:34 4 testified to this jury. But based on your review of the
04:18:38 5 work that Dr. McCann did in this case in his expert report,
04:18:43 6 did Dr. McCann provide a range of fill times?

04:18:45 7 **A** No.

04:18:46 8 **Q** He just made up a fill time when it was missing?

04:18:48 9 **A** Correct.

04:19:01 10 MS. SWIFT: One second.

04:19:27 11 **Q** Mr. Lanier asked you about this slide that I also
04:19:29 12 asked you about.

04:19:30 13 Do you remember that?

04:19:30 14 **A** Yes.

04:19:30 15 **Q** You see that it says "relevant notes fields"?

04:19:39 16 **A** Yes.

04:19:39 17 **Q** It doesn't say "in all of the notes fields that had
04:19:44 18 free-text comments" or anything like that, does it?

04:19:47 19 **A** No, it does not.

04:19:48 20 **Q** Did you make any subjective assessment of which
04:19:52 21 comment fields/notes fields to include in your analysis?

04:19:56 22 **A** We identified sort of free-text fields. We quantified
04:20:02 23 those, separate from the non-free-text fields.

04:20:05 24 So intuitively, if there's a free-text field, someone
04:20:09 25 could type in the word "kitten," as opposed to just

04:20:13 1 selecting the state [ph], so we identified the difference
04:20:15 2 between those two, but we didn't make a qualitative
04:20:18 3 assessment of either of them.

04:20:30 4 MS. SWIFT: Mr. Pitts, if I could switch over
04:20:32 5 to the computer, please.

04:20:44 6 **Q** And I've got back up on the screen, Mr. Brunner -- and
04:20:47 7 this is behind Tab 3 in the binder -- this is the table we
04:20:49 8 looked at before from your supplemental report. Correct?

04:20:52 9 **A** Yes.

04:20:52 10 **Q** It's Table 1.

04:20:55 11 Did you also include in your report other tables of
04:21:02 12 other categories of information that you collected with the
04:21:06 13 help of your team associated with the Notes production?

04:21:11 14 **A** Yes, several.

04:21:12 15 **Q** So just so that it's clear for the jury, this Table 1
04:21:16 16 contains the number and percentage of populated fields in
04:21:20 17 Walgreens' electronic notes data associated with the sample
04:21:23 18 2,000 prescriptions, and it's got a relatively lengthy list.

04:21:28 19 Do all of these fields include comments or free-text
04:21:33 20 notes?

04:21:35 21 **A** All of these? Negative.

04:21:37 22 **Q** Then Table 2 on the next page is another list of
04:21:46 23 fields that were collected.

04:21:47 24 Do all of these fields include notes or comments?

04:21:50 25 **A** Negative.

04:21:50 1 Q How about this table, Table 3, what is this showing?

04:21:59 2 MR. LANIER: Your Honor, I'm going to object
04:22:00 3 to questions outside the scope of cross. I didn't go
04:22:02 4 through these other tables, and she didn't on direct.

04:22:04 5 THE COURT: Well, this one there were
04:22:05 6 questions on.

04:22:07 7 MR. LANIER: Okay.

04:22:07 8 THE COURT: This one right up here there
04:22:09 9 certainly was.

04:22:12 10 MR. LANIER: That's okay. I'll just --

04:22:15 11 MS. SWIFT: Thank you, Your Honor.

04:22:19 12 BY MS. SWIFT:

04:22:19 13 Q What is this table showing, Mr. Brunner?

04:22:21 14 A This shows the 10 or 11, maybe 12 different fields
04:22:25 15 available in the data that contained free-text
04:22:30 16 possibilities.

04:22:30 17 Q Do you know whether when Mr. Catizone was talking
04:22:34 18 about the fields that he deemed relevant, whether he was
04:22:38 19 looking at all of these free-text notes fields?

04:22:41 20 A His comment related only to one of these fields.

04:22:45 21 Q Did you selectively report on fields in the sample?

04:22:49 22 A Negative.

04:22:49 23 Q All right. You were also asked some questions about
04:22:54 24 another one of Mr. Catizone's slides. It was this one.

04:23:04 25 MS. SWIFT: If I could have the ELMO back just

04:23:07 1 for a second, please, Mr. Pitts.

04:23:10 2 **Q** Do you remember the questions about this slide that
04:23:11 3 Mr. Lanier asked you?

04:23:12 4 **A** Yes.

04:23:12 5 **Q** I want to drill down on this a little bit because it
04:23:16 6 wasn't clear to me whether you had an opportunity to explain
04:23:19 7 how you were actually dealing with the what you call the
04:23:23 8 expanded patient histories.

04:23:25 9 When you said that 555 prescriptions -- let me take
04:23:33 10 that a step back.

04:23:34 11 We altered this slide so that it reads, "Of the 2,000
04:23:39 12 prescriptions total, 555 prescriptions contain some writing
04:23:44 13 in the dur_comment field," and then it goes on from there.

04:23:48 14 Do you recall when we did that on your direct
04:23:51 15 examination?

04:23:51 16 **A** Yes.

04:23:52 17 **Q** All of those 555 prescriptions, were those
04:23:57 18 prescriptions that were in the 2,000?

04:24:00 19 **A** I'm sorry, they were -- yes. Somewhere in the patient
04:24:06 20 history for 555 of those were DUR comments.

04:24:10 21 **Q** For 555,000 -- strike that.

04:24:13 22 For 555 prescriptions within the 2,000 that were the
04:24:19 23 sample set?

04:24:20 24 **A** Yes.

04:24:20 25 **Q** For those 555, they had at least one comment in a

04:24:25 1 prior prescription?

04:24:26 2 **A** That's correct.

04:24:27 3 **Q** Did you look to see whether for those 555
04:24:31 4 prescriptions within the sample set there may have been
04:24:35 5 many, many, many, many comments in prior prescriptions?

04:24:39 6 **A** There certainly may have been, yes.

04:24:41 7 **Q** Do you know how many there were or do you not know,
04:24:46 8 for DUR comments.

04:24:48 9 **A** For DUR comments, I don't recall specifically, but
04:24:51 10 there are many that are multiple.

04:24:53 11 MS. SWIFT: So if we could please switch back
04:24:56 12 to the computer, Mr. Pitts.

04:25:01 13 **Q** I believe this is -- we're back to Table 1 in your
04:25:04 14 supplemental report. I believe this is the table that
04:25:07 15 Mr. Lanier focused you on. And if I was -- if I was hearing
04:25:12 16 him correctly, it sounded to me like he was trying to ask
04:25:20 17 you whether, for example, this 555 that you have right here
04:25:27 18 was out of the 2,000 or if it was out of the 155,000.

04:25:32 19 What's the correct answer to that question?

04:25:33 20 **A** That's out of the -- the expanded patient histories
04:25:38 21 for 555 of the 2,000 have a DUR comment in them someplace.

04:25:43 22 **Q** So 555 prescriptions of the 2,000?

04:25:47 23 **A** Yes.

04:25:47 24 **Q** And if you're looking at those expanded patient
04:25:51 25 histories, there may be many, many, many more than that that

04:25:54 1 have a comment in the dur_comment field?

04:25:56 2 **A** Absolutely.

04:25:57 3 **Q** Is the same true for each of the comment or free-text
04:26:01 4 notes fields that you collected data on?

04:26:03 5 **A** Yes.

04:26:04 6 **Q** So for each of those where you have reported the
04:26:09 7 number of populated records, those numbers are out of the
04:26:15 8 2,000 sample prescriptions; is that a fair statement?

04:26:18 9 **A** That's correct. That's correct.

04:26:19 10 **Q** You're not reporting the total number of those Notes
04:26:25 11 comments that may appear in any prescription anywhere in the
04:26:28 12 expanded patient history?

04:26:29 13 **A** That's correct. So the 555 can be compared to the
04:26:34 14 2,000, not really compared to the 155,000. That's --

04:26:38 15 **Q** So do you remember the division problem that
04:26:40 16 Mr. Lanier asked you to compute for us?

04:26:43 17 **A** Yes.

04:26:43 18 **Q** He asked you to divide I think it was the prescriber
04:26:48 19 location comment number, the 1,497. He asked you to divide
04:26:53 20 that by 155,957.

04:26:59 21 Would that be an appropriate calculation to make?

04:27:01 22 **A** Absolutely not.

04:27:02 23 **Q** Why not?

04:27:03 24 **A** It's meaningless.

04:27:06 25 **Q** Why is it meaningless?

04:27:07 1 **A** Because one relates to the 2,000 in the sample. The
04:27:11 2 other is the universe of transactions.

04:27:15 3 **Q** Have you reported the universe of transactions out of
04:27:18 4 the 155,000 on this chart?

04:27:20 5 **A** Negative.

04:27:21 6 **Q** All right. I have a few questions about what
04:27:31 7 Mr. Lanier referred to as the bad doctors.

04:27:33 8 Do you remember those questions?

04:27:34 9 **A** I do.

04:27:35 10 **Q** He asked you whether you did a pill count for a number
04:27:43 11 of doctors.

04:27:48 12 Did you -- hold on a second here. I think I lost one
04:28:14 13 page.

04:28:32 14 Do you remember Mr. Lanier asked you about a Dr. Frank
04:28:35 15 Veres?

04:28:36 16 **A** I do.

04:28:37 17 **Q** And you testified that you didn't do a pill count for
04:28:41 18 Dr. Veres.

04:28:42 19 Did you look to see how many prescriptions Walgreens
04:28:45 20 filled for Dr. Frank Veres?

04:28:47 21 **A** I did.

04:28:47 22 **Q** How did you do that? What data did you use?

04:28:49 23 **A** We used the OARRS data.

04:28:54 24 **Q** How many prescriptions did Walgreens fill for
04:28:57 25 Dr. Frank Veres at all 13 of the Walgreens stores in Lake

04:29:06 1 and Trumbull Counties?

04:29:06 2 **A** 15,435.

04:29:09 3 **Q** From what time period to what time period?

04:29:12 4 **A** That covers OARRS, so it's 2008 through 2018.

04:29:17 5 **Q** 2008 to 2018, did I hear that correctly?

04:29:22 6 **A** Yes.

04:29:23 7 **Q** Did you compare that number to the number of
04:29:25 8 prescriptions that Overholt's Pharmacy filled for Dr. Frank
04:29:29 9 Veres?

04:29:29 10 **A** Yes.

04:29:29 11 **Q** How many prescriptions did Overholt's fill for
04:29:33 12 Dr. Frank Veres?

04:29:33 13 **A** 16,355.

04:29:37 14 **Q** In what time frame?

04:29:38 15 **A** Same time period.

04:29:39 16 **Q** Was it the exact same time frame?

04:29:42 17 **A** Oh, no, I'm sorry. For Overholt's/Champion? No, it's
04:29:48 18 actually for a shorter period of time. Overholt's/Champion
04:29:51 19 ended -- closed their doors in 2010. I believe it was
04:29:54 20 October, in 2015. I believe it was October of 2015. So
04:30:00 21 that's a shorter period of time.

04:30:02 22 **Q** So did I hear you correctly that all 13 Walgreens
04:30:05 23 stores over a lengthier period of time filled fewer
04:30:09 24 prescriptions for Dr. Veres than Overholt's/Champion in a
04:30:14 25 shorter time period?

04:30:14 1 **A** Yes, in just -- Walgreens covers 11 years of activity
04:30:21 2 across all 13 stores, and the Overholt's/Champion covers
04:30:25 3 seven and a half years of activity across just that one
04:30:27 4 location.

04:30:52 5 MS. SWIFT: That's all I have for you. Thanks
04:30:54 6 very much, Mr. Brunner.

04:30:56 7 THE COURT: Anything from either of the other
04:30:58 8 two defendants? I assume not, but I want to ask.

04:31:02 9 MR. DELINSKY: No, thank you, Your Honor.

04:31:06 10 MR. MAJORAS: No, thank you, Your Honor.

04:31:08 11 THE COURT: Then Mr. Lanier, you're back up.

04:31:10 12 MR. LANIER: Thank you, Judge.

04:31:26 13 May it please the Court.

04:31:28 14 - - - - -

04:31:28 15 RECROSS-EXAMINATION

04:31:28 16 BY MR. LANIER:

04:31:30 17 **Q** Okay, Mr. Brunner, we're almost done. I want to cover
04:31:32 18 a couple things.

04:31:33 19 On the bad doctors you were asked questions about, was
04:31:36 20 it Dr. Veres you ran the numbers on?

04:31:39 21 **A** I ran some numbers for some of these doctors. You
04:31:41 22 asked me here specifically about pill count, I think.

04:31:46 23 **Q** Yup. And you did prescription count instead, right?

04:31:50 24 **A** I have prescription count -- I did prescription
04:31:52 25 counts, yes.

04:31:52 1 Q And the prescriptions for Veres was 15,000-what?

04:31:58 2 A 15,535, I believe. I'll check my note. 435, I'm
04:32:07 3 sorry.

04:32:07 4 Q I'm sorry, what is it?

04:32:09 5 A 15,435.

04:32:12 6 Q All right. We need to get it right.

04:32:13 7 15,435 from Walgreens.

04:32:17 8 And how many from Overholt's/Champion combined, both
04:32:21 9 of those stores?

04:32:22 10 A That location, the Overholt's/Champion location had
04:32:27 11 16,355.

04:32:29 12 Q And are you combining the two stores there?

04:32:31 13 A Yeah, I measured by location as I showed in the chart,
04:32:35 14 that address.

04:32:36 15 Q Right. You combined those two stores and you combined
04:32:38 16 the Walgreens stores to get how many prescriptions were put
04:32:41 17 out on the street through Dr. Veres. And Walgreens is about
04:32:48 18 just under a thousand prescriptions less; is that right?

04:32:52 19 A That's correct.

04:32:52 20 Q Did you run the numbers for Dr. Demangone?

04:32:57 21 A Yes.

04:32:57 22 Q What were those?

04:33:02 23 A For Walgreens was 13,663.

04:33:11 24 Q Uh-huh. What about for Champion's and Overholt's
04:33:19 25 combined?

04:33:20 1 **A** 6.

04:33:21 2 **Q** 6 what?

04:33:22 3 **A** 6.

04:33:23 4 **Q** 6 what? 6 prescriptions?

04:33:29 5 **A** 6 prescriptions, yes.

04:33:32 6 **Q** She didn't ask you about that one, did she?

04:33:45 7 Next I want to get real clear on what you're saying

04:33:49 8 about Mr. Catizone and Mr. McCann.

04:33:55 9 You looked at 2,000 prescriptions, correct?

04:34:05 10 **A** That's correct.

04:34:05 11 **Q** And that's what Mr. McCann looked at, correct?

04:34:12 12 **A** Correct.

04:34:12 13 **Q** And Mr. McCann found of those 2,000 that 61 percent

04:34:20 14 were blank across the relevant comment note fields. And if

04:34:25 15 you look only at those 2,000 prescriptions, he's correct,

04:34:31 16 isn't he?

04:34:31 17 **A** We looked at the entire -- all of the produced data

04:34:33 18 for them, all of the patient histories.

04:34:35 19 **Q** Wasn't my question, sir. Answer my question, please.

04:34:41 20 If you look only at those 2,000 prescriptions and the

04:34:48 21 notes associated with those 2,000 prescriptions, Catizone is

04:34:53 22 correct, right?

04:34:55 23 **A** The actual transaction, the records for those 2,000?

04:34:59 24 **Q** Yes.

04:35:00 25 **A** That's correct.

04:35:00 1 Q I'm sorry?

04:35:01 2 A That's correct.

04:35:01 3 Q Okay. Now, what you've done is said I'm going to take
04:35:08 4 patient Lanier, and I'm going to run his entire history
04:35:16 5 through the company and pull up any old prescriptions he's
04:35:22 6 had filled and see if they had comments in the notes, right?

04:35:28 7 A That's -- we looked at the expanded patient histories.
04:35:32 8 My understanding, that's what pharmacists would look at.

04:35:35 9 Q Well, you don't know if pharmacists can do that, you
04:35:39 10 don't know if some of that data's been erased because
04:35:42 11 there's not enough room. You don't know any of that kind of
04:35:46 12 stuff, do you?

04:35:46 13 A That's correct.

04:35:47 14 Q So what you did then is you looked at 155,957 other
04:35:54 15 prescription entries --

04:35:59 16 A Not actually. The 155 includes the 2,000.

04:36:07 17 Q All right. Thank you. You looked at 153,957 other
04:36:12 18 prescriptions to get your numbers, didn't you?

04:36:15 19 A Correct.

04:36:15 20 Q Then I need to, in closing, pester you on a couple of
04:36:21 21 your answers to juror questions.

04:36:28 22 MR. LANIER: Do we have the juror questions,
04:36:30 23 please? Thank you.

04:36:31 24 MS. SWIFT: Sure.

04:36:33 25 Q The first one I want to talk to you about I believe

04:36:41 1 was the first one Ms. Swift read. It says, "If a field is
04:36:49 2 left blank during the data analysis, how does this affect
04:36:51 3 the results if the number of blank fields is a significant
04:36:55 4 number?"

04:36:57 5 I think your answer was "If the number is
04:37:00 6 insignificant."

04:37:03 7 **A** Yes.

04:37:04 8 **Q** The juror question is "What if it's a significant
04:37:07 9 number, does it affect the results?"

04:37:09 10 **A** Thank you for clarifying.

04:37:10 11 If it's an insignificant number, it's easy to ignore.
04:37:15 12 Again, if you want to -- if you need to project into -- I'm
04:37:20 13 sorry, not project, if you need to estimate an error rate,
04:37:22 14 you would take the -- whatever that fraction is that are
04:37:25 15 missing that critical value.

04:37:29 16 **Q** But you still haven't answered the question, which is
04:37:31 17 what if it is a significant number.

04:37:34 18 **A** Then depending on the purpose, one would just not be
04:37:40 19 able to analyze and say it was only done on a subset of the
04:37:44 20 data. Or -- and Dr. McCann, for example, said you could
04:37:54 21 project a range. But depending on the purpose, that's going
04:37:57 22 to have varying reliability or utility for the type of
04:38:01 23 analysis that you're doing.

04:38:03 24 **Q** Which is, if we go back and look at the note we made
04:38:06 25 with Dr. McCann when he's on the stand, he did give the

04:38:09 1 range between zero and all at the same time, and said
04:38:14 2 somewhere in there's got to be the answer.

04:38:16 3 You don't disagree with that, do you?

04:38:18 4 **A** It's the first I'm seeing of that. I don't have an
04:38:21 5 opinion on that.

04:38:22 6 **Q** Okay. Well, you can have an opinion real quick. I
04:38:25 7 mean, it's got to be right. It's got to be between zero and
04:38:30 8 all the same. It's got to be somewhere in there, doesn't
04:38:32 9 it?

04:38:34 10 **A** That's -- as a descriptor of general activity, so when
04:38:43 11 one is describing a circumstance where there is -- across a
04:38:49 12 broad population, one might be able to describe a range of
04:38:53 13 possible outcomes along with an error that might happen at
04:39:00 14 the tails outside the projection.

04:39:04 15 **Q** In other words -- sorry.

04:39:06 16 **A** However, for identifying any one individual
04:39:09 17 transaction, that projection is completely worthless,
04:39:13 18 because you can't tell if this particular transaction fits
04:39:16 19 in the -- under the bell curve or not in the bell curve.

04:39:20 20 **Q** With due respect, sir, can you answer my question?

04:39:23 21 My question is, won't the answer lie somewhere in that
04:39:26 22 range?

04:39:30 23 **A** Give me a moment to read the slide, if I might.

04:39:33 24 **Q** It's real easy.

04:39:34 25 The number of people that are three patients filling

04:39:38 1 the prescription the same hour with the same doctor is going
04:39:44 2 to be somewhere between zero and all of them. Right?

04:39:48 3 **A** Described that way, that's reasonable.

04:39:51 4 **Q** Okay. Thank you.

04:39:53 5 And then the last I want to pester you on is this
04:39:57 6 juror note: "Why didn't you add all Walgreens dispensing
04:40:01 7 numbers."

04:40:02 8 Remember that?

04:40:02 9 **A** Yes, I do.

04:40:03 10 **Q** You didn't even use dispensing numbers on the chart
04:40:05 11 that we were talking about. You used distribution numbers,
04:40:08 12 didn't you?

04:40:09 13 **A** Just as Dr. McCann did.

04:40:12 14 **Q** I'm not fussing that, sir. She didn't ask you why did
04:40:15 15 Dr. McCann's report break it out. She asked you why you did
04:40:18 16 the way you did.

04:40:19 17 Do you see that?

04:40:21 18 **A** As I said, we tried to use his data as much as
04:40:24 19 possible so as to avoid conflict over what data we were
04:40:27 20 looking at.

04:40:27 21 **Q** And "she" may be a "he," and I may have just stepped
04:40:30 22 my foot deep into my mouth, so if so, I apologize; but the
04:40:34 23 juror, whomever they may be.

04:40:36 24 You chose to add those numbers together. No?

04:40:44 25 **A** No.

04:40:45 1 Q But you did add together Champion's and Overholt's,
04:40:50 2 didn't you? I'm sorry?

04:40:54 3 A We used the OARRS data for the presentations we made,
04:40:58 4 which includes --

04:40:59 5 Q Is that a "yes" answer?

04:41:00 6 MS. SWIFT: Objection to interrupting his
04:41:01 7 answer.

04:41:01 8 MR. LANIER: I'm sorry, Judge, I'm out of --

04:41:05 9 THE COURT: Well, let -- Mr. Brunner, did you
04:41:08 10 finish your answer?

04:41:09 11 A So as I described, the market share numbers are all
04:41:12 12 from -- the market share numbers that we presented are all
04:41:17 13 from the ARCOS data, just as Dr. McCann's were from the
04:41:21 14 ARCOS data. The Overholt's/Champion relative to Walgreens
04:41:26 15 numbers, those are all based on dispensing numbers from the
04:41:30 16 OARRS data.

04:41:31 17 Q Sir, what question do you think I asked you?

04:41:35 18 A The question was "Why didn't you total or did you
04:41:38 19 total" --

04:41:40 20 Q I said, "But you did add together Champion's and
04:41:45 21 Overholt's, didn't you?"

04:41:47 22 A Yes.

04:41:47 23 MR. LANIER: Thank you. Pass the witness.
04:41:49 24 Actually, the witness is done.

04:41:50 25 MS. SWIFT: Your Honor, if I may ask one or

04:41:53 1 two questions on this juror question issue?

04:41:55 2 THE COURT: No, we've been having this two
04:41:57 3 rounds, and I'm going to stick with that.

04:41:59 4 MS. SWIFT: All right. I thought there was
04:42:00 5 some confusion on the question, but all right.

04:42:02 6 THE COURT: All right. Thank you very much,
04:42:04 7 Mr. Brunner. We appreciate your appearance. Safe travels.

04:42:07 8 THE WITNESS: Thank you.

04:42:11 9 If we can just go on the headphones for a minute.

04:42:15 10 (At side bar at 4:42 p.m.)

04:42:27 11 THE COURT: Unless there's an incredibly short
04:42:29 12 witness, I don't want to break someone up starting at
04:42:32 13 quarter to 5. If there's a real short deposition or
04:42:36 14 something, but I don't want to start a live witness and go
04:42:38 15 for half an hour, unless people feel strongly. It's the
04:42:43 16 defendants' turn, so you tell me what you -- who would be
04:42:46 17 next?

04:42:52 18 MR. DELINSKY: Your Honor, the next witness is
04:42:53 19 a Nicole Harrington, who is a representative for corporate
04:42:57 20 for CVS. It would be lengthy testimony, so my preference
04:43:00 21 would be not to break it up.

04:43:01 22 We have a video, but it's not short. It's about an
04:43:06 23 hour and 20 minutes.

04:43:07 24 THE COURT: I'm going to break it off. Unless
04:43:09 25 there's a strong objection, I think we should break it off.

04:43:12 1 Any problem with the plaintiffs breaking now?

04:43:13 2 MR. LANIER: No, Judge. However you want to
04:43:15 3 run it, it's your Court.

04:43:17 4 THE COURT: I'd rather not just start for half
04:43:19 5 an hour, so let's break for the day.

04:43:22 6 (In open court at 4:43 p.m.)

04:43:27 7 THE COURT: All right. Ladies and gentlemen,
04:43:28 8 we're going to break a little bit early for the day. The
04:43:30 9 next witness is going to be substantially longer than a half
04:43:34 10 an hour, and I think it's more coherent to have it in one
04:43:37 11 segment than break it up.

04:43:39 12 So have a good evening. Usual admonitions. Do not
04:43:44 13 read, review, encounter anything about this case or anything
04:43:47 14 close to it. Don't discuss this case with anyone. And
04:43:50 15 we'll pick up tomorrow morning at 9:00 with the next defense
04:43:53 16 witness.

04:44:24 17 (Jury excused for the day at 4:44 p.m.)

04:44:24 18 THE COURT: Okay. Please be seated for a
04:44:26 19 minute. Just close the back door, please.

04:44:35 20 All right. I think it's preferable not to break
04:44:38 21 witnesses in two for a short period, so I think this made
04:44:41 22 sense.

04:44:42 23 Have you had a chance to confer about Ms. Hiland's
04:44:53 24 exhibits or are we still working on those?

04:44:55 25 MS. FUMERTON: Your Honor, we have not had a

04:44:57 1 chance to discuss. We should be able to do it tomorrow
04:45:00 2 morning.

04:45:00 3 THE COURT: I'd like you to do this over the
04:45:02 4 evening for Hiland and for Edwards, and probably with
04:45:06 5 Brunner. We're probably not going to have many exhibits for
04:45:09 6 Brunner. So maybe first thing in the morning we can get all
04:45:11 7 three, because I'd like to stay current. And then we'll
04:45:15 8 pick up with the next witness.

04:45:17 9 Okay. Anything anyone wanted to bring up?

04:45:25 10 MR. DELINSKY: No, thank you, Your Honor.

04:45:29 11 THE COURT: All right. Have a good evening.

04:45:31 12 Oh, for the time today, I had 2 hours for the
04:45:34 13 plaintiffs and 4 and a quarter, 4.25, for the defendants.

04:45:38 14 MR. WEINBERGER: Your Honor, I hate to -- this
04:45:40 15 is going to sound very nitpicky, but during the course of my
04:45:43 16 examination of Mr. Edwards, there were -- there was at least
04:45:48 17 8 or 12 minutes -- what was the number?

04:45:51 18 MS. LANIER: 12 minutes.

04:45:52 19 MR. WEINBERGER: There was 12 minutes of
04:45:54 20 interruption, mostly of objections that were overruled, and
04:45:59 21 including a couple that were very lengthy. And so I would
04:46:01 22 ask that they not be charged against us.

04:46:05 23 MR. SWANSON: Your Honor, it's Brian Swanson
04:46:06 24 for Walgreens. At least one of those objections was
04:46:08 25 sustained. And I'll note that my exam of Mr. Edwards

04:46:13 1 yesterday, I had probably 20 minutes of side bars from
04:46:17 2 Mr. Weinberger, who seemed to have objected to every other
04:46:20 3 question. So I don't --

04:46:23 4 THE COURT: Well, I don't make the objections,
04:46:26 5 and I try only to go on the side bar where it's necessary,
04:46:29 6 but I don't want to have speaking objections from either
04:46:31 7 side. I don't think it's appropriate. Some of the side
04:46:35 8 bars are short, some are long, so there have been long ones
04:46:39 9 on both sides and short ones on both sides. So we'll try
04:46:44 10 and keep them to a minimum.

04:46:47 11 MR. SWANSON: Thank you, Your Honor.

04:46:48 12 THE COURT: Okay.

04:46:50 13 (Proceedings adjourned at 4:46 p.m.)

14 * * * * *

15 **C E R T I F I C A T E**

16
17 I certify that the foregoing is a correct transcript
18 of the record of proceedings in the above-entitled matter
19 prepared from my stenotype notes.
20

21 /s/ Lance A. Boardman 11-02-2021
22 Lance A. Boardman, RDR, CRR DATE
23
24
25